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ABSTRACT

This document contains regulations governing the provision of equal educational opportunities and free, appropriate public education in the least restrictive educational alternative to all Maine student residents with disabilities between the ages of 5 and 20. Twenty sections contain provisions relating to: (1) the policy and purpose of special education; (2) definitions of special education terms; (3) the classification of students with disabilities; (4) the responsibility of the state for providing special education services; (5) special education services; (6) supportive services; (7) child find and referrals; (8) the pupil evaluation team process; (9) evaluation and identification of students with disabilities); (10) the Individualized Education Program; (11) the least restrictive environment alternative; (12) due process requirements; (13) dispute resolution procedures, including mediations, complaints, and hearings; (14) the discipline of students with disabilities; (15) education records; (16) special education reviews; (17) state approval of programs at private schools; (18) the state subsidy and direct payments for special education programs; (19) public school tuition computations; and (20) private school tuition computations and approval procedures. An appendix includes provisions defining the "use of a dangerous weapon." (CR)

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Maine Special Education Regulations

Chapter 101

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05-071 DEPARTMENT OF EDUCATION

CHAPTER 101

SUMMARY: This rule governs the provision of equal educational opportunities / free appropriate public education (F.A.P.E.) in the least restrictive educational alternative to all students with disabilities between the ages of 5 and 20 enrolled in the schools who are residents of the State of Maine.

1. POLICY AND PURPOSE

1.1 Introduction

Maine law (20-A M.R.S.A. Chapters 301 and 303) entitles all school-age students with disabilities to an equal educational opportunity / free appropriate public education. This objective is to be implemented by school administrative units (S.A.U.s) and private schools approved for the provision of special education and supportive services through implementation of the policies and procedures required in this rule.

This rule is intended to implement the State's obligations under the Federal Individuals with Disabilities Education Act (P.L 105-17, 20 U.S.C. 1401 *et seq.*) and implementing regulations.

The general principles governing the provision of a free appropriate public education for students with disabilities are set forth in these rules.

1.2 Nondiscrimination

No student with a disability may be excluded from the benefits of a free appropriate public education in the schools of Maine. Each school administrative unit shall provide a free appropriate public education to each such student regardless of the nature or severity of the student's disability.

Appropriate education shall include the provision of regular and/or special education and supportive services that are designed to meet appropriately the individual educational needs of students with disabilities based on the procedures set forth in this rule and applicable federal law.

1.3 Free Appropriate Public Education

The guarantee of equal educational opportunity entitles each student with a disability residing in the State, including students with disabilities who have been suspended or expelled, to be provided with a free appropriate public education that emphasizes special education and supportive services designed to meet their unique needs and prepare them for employment and independent living. This education includes special education and supportive services which:

A. Are provided at public expense, under public supervision and direction, and at no cost to the parents;

B. Meet the standards and personnel qualifications required by these regulations;

C. Are appropriate to the special needs of the student as defined in an Individualized Education Program; and

D. Are provided in the least restrictive educational alternative (*see* §11.2).

1.4 Special Education Process: An Overview

The special education process for which school units are responsible has several components. In brief, the process includes a child find process to determine which students may have disabilities that would require referral to a Pupil Evaluation Team (P.E.T.). A second phase includes more individualized evaluations of each referred student and a discussion of the evaluative and other data by the P.E.T. composed of school staff and parents. Other persons who have knowledge of the student may be invited to attend the P.E.T. meeting at which it is determined:

A. Whether the student is a student with a disability in need of special educational services; and

B. What special education and supportive services are appropriate for the student's educational needs.

Once these determinations are made, the Pupil Evaluation Team shall write an Individualized Education Program (I.E.P.) for the student.

The provision of a free appropriate public education and the placement of the student shall be made according to the provisions of the I.E.P. The I.E.P. shall be developed and placement shall be made in accordance with the principle of the "least restrictive educational alternative" (*see* Part 11).

The special education process affords special rights to students with disabilities and their parents through "due process" protections. A parent must be involved in the evaluation, identification, development of the student's Individualized Education Program and the placement of the student in a special education placement. If the parent does not agree with the proposed or refused evaluation, identification, program or placement, the parent may request mediation, file a complaint or request a due process hearing (*see* Part 13, Dispute Resolution Procedures).

1.5 Approval of Special Education Services

Special education services and supportive services may be provided to students with disabilities only in schools which have been approved by the Commissioner.

The Commissioner, through the staff of the Special Services Team, Maine Department of Education reviews and approves or disapproves all special education services or proposed services provided by public or private schools.

The approval of the special education services provided by a school unit or private school shall include the Department's review and approval of the special education reports submitted in the form and manner required by the Commissioner and the program review and technical assistance process specified in this rule.

1.6 Due Process; Opportunity to Question

The parents of each student with a disability or an adult student may question any matter, decision or determination relating to the identification, evaluation, placement of the student and/or the provision of a free appropriate public education to the student, as set forth in this rule.

1.7 Advisory Rulings

Any interested person may submit a written request to the Commissioner for an advisory ruling. The Department may, at its discretion, issue an advisory ruling with respect to the applicability of any of these regulations to an actual state of facts. All such advisory rulings, or determinations not to issue an advisory ruling, shall be in writing within 60 days of the receipt of the request.

An advisory ruling shall not be binding upon the Department nor on any hearing officer appointed by the Commissioner to conduct due process hearings under this rule.

2. DEFINITIONS

All terms used in this rule shall have the meanings established by applicable state or federal law. The following terms have the definitions specified herein:

2.1 Adult Student

An adult student is a student who has reached the age of majority or has been emancipated by a court of competent jurisdiction. Each adult student shall be entitled to exercise the parental rights specified under these rules. The term does not include students who have reached the age of majority and for whom a court of competent jurisdiction has appointed a guardian.

2.2 Assistive Technology Device

As used in these rules, "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of students with disabilities.

2.3 Assistive Technology Service

As used in these rules, "assistive technology service" means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

A. The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;

B. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;

C. Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

D. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

E. Training or technical assistance for a student with a disability or, if appropriate, that child's family; and

F. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of students with disabilities.

2.4 Commissioner

The term "Commissioner" means the Commissioner of the Maine Department of Education or a designee.

2.5 Day

The term "day" means a calendar day. The term "school day" shall mean a day or partial day on which school was in operation as an instructional day (*see* Department of Education Regulations 125, Basic School Approval). The term "business day" means Monday through Friday except for Federal and State Holidays.

2.6 Department

The term "Department" means the Maine Department of Education.

2.7 Educational Performance

The term "educational performance" includes academic areas (reading, math, communication, etc.), non-academic areas (daily life activities, mobility, etc.), extracurricular activities, progress in meeting goals established for the general curriculum, and performance on State-wide and local assessments.

2.8 Evaluation

The term "evaluation" means procedures selectively used to determine whether a particular student is a student with a disability and the nature and extent of the special education and supportive services needed by the student. The term does not include basic tests administered to or procedures used with all students in a school, grade, or class nor individualized procedures used to assist a regular education teacher to adapt the general curriculum so that the student may benefit from the general curriculum.

2.9 Expulsion

The term "expulsion" means the termination of all educational services by a school board for a student who has been deliberately disobedient, deliberately disorderly, or for infractions of violence or possession, furnishing of or trafficking of any scheduled drug as defined in 17-A M.R.S.A. Chapter 45.

2.10 Functional Behavior Assessment

The term "functional behavior assessment" means a school-based process used by the Pupil Evaluation Team, which includes the parent and, as appropriate, the student, to determine why a student engages in challenging behaviors and how the behavior relates to the student's environment. The term includes direct assessments, indirect assessments and data analysis designed to assist the P.E.T. to identify and define the problem behavior in concrete terms; identify the contextual factors (including affective and cognitive factors) that contribute to the behavior; and formulate a hypothesis regarding the general conditions under which a behavior usually occurs and the probable consequences that maintain the behavior.

2.11 General Curriculum

The term "general curriculum" shall mean the school administrative unit's local curriculum for grades K–12 which incorporate the content standards and performance indicators of the Learning Results.

2.12 Illegal Drugs

The term "illegal drugs" means a controlled substance; but does not include such a substance that is legally possessed or used under the

supervision of licensed health-care worker or that is legally possessed or used under any other authority or provision of law.

2.13 Instructional Time

The term "instructional time" means the period in which a student is provided an opportunity to engage in learning activities. The term does not include lunch, recess, or the time between classes unless the student's I.E.P. contains specific goals and objectives addressing these periods.

2.14 Parent

The term "parent" means a natural or adoptive parent, a guardian, a person acting as a parent of a child (such as a grandparent or step-parent with whom the child lives, or a person who is legally responsible for the child's welfare) or a surrogate parent (*see* §2.29) of a child who has been appointed in accordance with these rules. The term "parent" does not include the State or employees of a state department responsible for the education or care of a student.

A foster parent may qualify as a parent under this section if:

A. The natural parent's authority to make educational decisions on the student's behalf has been terminated under State law;

B. The foster parent has an ongoing, long-term parental relationship with the student;

C. The foster parent is willing to participate in making educational decisions on the student's behalf; and

D. The foster parent has no interest that would conflict with the interests of the student.

2.15 Positive Behavior Supports And Interventions

The term "positive behavior intervention" means an intervention system individually designed by the Pupil Evaluation Team to assist a student to acquire educationally and socially appropriate behaviors and to reduce patterns of dangerous, destructive, disruptive or defiant behaviors. Positive behavior supports and interventions are determined by the Pupil Evaluation Team and based upon the results of functional behavior assessments. A primary goal of positive behavior supports and interventions is to teach educationally and socially appropriate behavior as a replacement for problem behavior.

2.16 Private General Purpose School

A "private general purpose school" is a private school which provides a regular elementary or secondary instructional program for students of

eligible or compulsory school age and which is approved for such purposes in accordance with 20-A M.R.S.A. §§ 2901 and 2951.

2.17 Private Special Purpose School

A "private special purpose school" is a private school approved by the Commissioner to provide special education and supportive services exclusively to students with disabilities. For purposes of this rule, the term includes, but is not limited to, day schools, day treatment programs with educational components and residential treatment centers.

2.18 Resident Student

A "resident student" is a student of eligible school age whose parent or legal guardian resides in the school unit.

2.19 School Administrative Unit

The term "school administrative unit" means a state approved unit of school administration composed of one or more municipalities which must provide public education to all public school students in the unit. For purposes of this rule, the Unorganized Territory Schools, 20-A M.R.S.A. §§3201 *et seq*. shall be included within this definition.

2.20 School Year

"School year" is defined as the period from July 1 through June 30 of the next calendar year.

2.21 Special Education Placement

"Special education placement" means the instructional setting in which special education services are provided and is a physical location characterized by the enrollment of students with disabilities. A placement is neither a type of service nor a type of program.

2.22 Special Education Program

A "special education program" is a full-time or part-time educational program designed to provide a free appropriate public education to students with disabilities through the delivery of special education services by qualified individuals as specified in a student with a disability's Individualized Education Program.

2.23 Special Education Services

"Special education services" are educational services specially designed to meet the unique needs of a student with a disability provided at no cost to the parent by qualified individuals as defined by the commissioner. All special education services shall be provided by qualified individuals employed or contracted by a school administrative unit, a private special purpose school, or a private general purpose school approved to provide special education and supportive services.

2.24 State Agency Client.

A "state agency client" is a student of eligible school age who is:

A. In the care or custody, or both, of the Department of Human Services or the Department of Mental Health, Mental Retardation and Substance Abuse Services;

B. Placed, by a caseworker from the Department of Human Services or an authorized agent of Children's Services, Department of Mental Health, Mental Retardation and Substance Abuse Services for reasons other than educational reasons, with a person who is not the student's parent, legal guardian or relative;

C. Attending a public or private school while still a resident of a state-operated institution; or

D. In the custody or under the supervision of the Department of Corrections, including, but not limited to, a juvenile on conditional release, an informally adjusted juvenile, a probationer or a juvenile on aftercare status from the Maine Youth Center and who is placed, for reasons other than educational reasons, pursuant to a court order or with the agreement of an authorized agent of the Department of Corrections, outside the juvenile's home.

2.25 State-Operated Institution

A "state-operated institution" is a facility owned and operated by the Maine Department of Mental Health, Mental Retardation and Substance Abuse Services, including:

Aroostook County Residential Center

Augusta Mental Health Institute

Bangor Mental Health Institute

Elizabeth Levinson Center

2.26 State Ward

A "state ward" is a person under the age of 18, or an older person of eligible school age, for whom the State of Maine is legal guardian by court order. The term does not include residents of Maine's correctional facilities.

2.27 Student with a Disability

The term "student with a disability" is defined in Part 3 of these rules.

2.28 Supportive Services

"Supportive Services" means special education transportation, and such developmental, corrective, and other supportive services as are required

to assist a student with a disability to benefit from his/her special education program. The term includes, but is not limited to, speech-language pathology, audiology, counseling services including rehabilitation counseling, orientation and mobility services, psychological services, physical therapy, occupational therapy, recreation including therapeutic recreation, early identification and assessment of students with disabilities, and medical services except that such medical services shall be for diagnostic or evaluation purposes only. The term also includes school health services, social work services in schools, and parent counseling and training. All supportive services shall be provided by appropriately certified or licensed professionals or appropriately supervised support staff. The term "Supportive Services" is synonymous with the term "Related Services" as used in the 1997 Amendments to the Individuals with Disabilities Education Act.

2.29 Surrogate Parent

A "surrogate parent" is a person appointed to fulfill the duties of a parent in accordance with §12.6, Surrogate Parents, of this rule.

2.30 Suspension

"Suspension" means a disciplinary action taken by an authorized school administrator or school board which results in the temporary discontinuation of educational services and the removal of the student from educational opportunities.

2.31 Transition Services

The term "transition services" means a coordinated set of activities for a student with a disability, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based on the individual student's needs, taking into account the student's preferences and interests, and shall include, but not be limited to, special education services, instruction, supportive services, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and functional vocational evaluation.

2.32 Weapon

The term "weapon" means a dangerous weapon as defined by 18 U.S.C. §930 (g)(2) or 17-A M.R.S.A. §2(9).

(NOTE: The Federal and Maine definitions of weapon are attached as Appendix 1.)

3. STUDENTS WITH DISABILITIES

3.1 Student with a Disability; General Definition

This rule addresses the duty to provide a free appropriate public education to a "student with a disability."

A student with a disability is an individual who:

A. Has reached the age of 5 years on or before October 15;

B. Has neither graduated from a secondary school program with a regular high school diploma nor reached 20 years of age at the start of the school year; and

C. Has been evaluated according to these rules and has been determined to have a disability which requires the provision of special education and supportive services.

A student with a disability shall have one or more of the disabilities listed in this section (Part 3, Students with Disabilities).

3.2 Autism

Autism means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three, that adversely affects educational performance.

Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disability, as defined in §3.5 of these rules.

A student who manifests the characteristics of autism after age 3 could be identified as a student with autism if the criteria in the preceding section are satisfied.

3.3 Deaf-Blindness

A student who has deaf-blindness exhibits concomitant visual and hearing impairments, the combination of which causes such severe communication, and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

3.4 Deafness

A student who is deaf has a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing,

with or without amplification, that adversely affects the student's educational performance.

3.5 Emotional Disability

A student with an emotional disability has a condition which exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance:

A. An inability to learn that cannot be explained by intellectual, sensory, or health factors;

B. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

C. Inappropriate types of behaviors or feelings under normal circumstances;

D. A general pervasive mood of unhappiness or depression;

E. A tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term does not apply to students who are "socially maladjusted," unless it is determined that they have an emotional disability.

3.6 Hearing Impairment

A student who has a hearing impairment has an impairment in hearing whether permanent or fluctuating, and that adversely affects the student's educational performance but who is not included under the definition of deafness in §3.4.

3.7 Mental Retardation

A student with mental retardation exhibits significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behaviors and manifested during the developmental period that adversely affect the student's educational performance.

3.8 Multiple Disabilities

A student with multiple disabilities exhibits concomitant impairments (such as mental retardation and blindness, mental retardation and orthopedic impairment, etc.) the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include students who have deaf-blindness.

3.9 Orthopedic Impairment

A student with an orthopedic impairment exhibits a severe orthopedic impairment that adversely affects the student's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

3.10 Other Health Impairment

A student with an other health impairment exhibits limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems, such as asthma, attention deficit disorder, attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, or sickle cell anemia, and that adversely affects the student's educational performance.

3.11 Specific Learning Disability

A student with a specific learning disability exhibits a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

The Pupil Evaluation Team may determine that a student has a specific learning disability if:

1. The student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (2) of this section, if provided with learning experiences appropriate for the student's age and ability levels; and

2. The Team finds that the student has a severe discrepancy between the student's achievement and intellectual ability as determined by individualized assessment of intelligence and academic achievement in one or more of the following areas:

Oral expression;

Listening comprehension;

Written expression;

Basic reading skill;

Reading comprehension;

Mathematical calculation; or

Mathematical reasoning.

The Pupil Evaluation Team may not identify a student as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of visual, hearing or motor impairments; mental retardation; emotional disability; or environmental, cultural, or economic disadvantage.

3.12 Speech and Language Impairment

A student with a speech and language impairment has a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects the student's educational performance.

3.13 Traumatic Brain Injury

Traumatic brain injury means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment or both that adversely affects a student's educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

3.14 Visual Impairment including blindness

A student with a visual impairment has an impairment in vision that, even with correction, adversely affects the student's educational performance. The term includes both partial sight and blindness.

4. RESPONSIBILITY FOR SPECIAL EDUCATION SERVICES

4.1 General Principles: Responsibility for Special Education Services and Finances

Each school administrative unit is responsible for providing special education services to all resident students and other eligible students (as defined in these rules) within its geographical jurisdiction who are identified as students with disabilities according to the procedures established in this rule. Where a school unit has the responsibility for providing special education services to students with disabilities, it may also bear financial responsibility for the cost of such services, receiving state subsidy in accordance with the Maine School Finance Act. In some situations, the cost may be borne directly by one or more state agencies,

although the provision of special educational services remains the responsibility of the unit.

4.2 Resident Students

A school unit shall provide special education services to all students with disabilities whose parent resides within the school unit and to all adult students who reside within the school unit. This shall include all students who attend the public schools of the unit, or who attend other public schools or private schools on a tuition or contract basis at public expense.

In the case of students attending home schools, religiously affiliated schools, or other private schools at private expense, the school unit shall provide a genuine opportunity for equitable participation in the unit's special education services. Amounts expended for the provision of these services by a school administrative unit shall be no less than a proportionate amount of Federal funds made available to the unit under the IDEA, (*see* §4.7, Responsibility for Students with Disabilities Enrolled by Their Parents In Private Schools or Receiving Home Schooling).

In the case of a student who is homeless as defined by 20-A M.R.S.A. §1(13-A) the parents, the student's social worker if the parent is unavailable, or the adult student may chose to attend school at either the school of origin or the school district of residence for the remainder of any school year, or in any case in which a family becomes homeless between academic years, for the following academic year. Services for homeless students shall be comparable to other students in the school of choice and shall be provided consistent with the requirements of Maine Department of Education Regulations 14 regarding School Board Policies on Exceptions to the General Residency Rules and Education of Homeless Students

4.3 State Wards

A state ward who is placed by a state agency in a residential placement other than a residential treatment center as defined in 20-A M.R.S.A. §1(24-A)(D)(3), shall be considered a resident of the school administrative unit where the residential placement is located.

A school unit shall provide special education services to any state ward who requires special education services and who resides within the unit's boundaries in a foster home, group home, therapeutic group home, emergency shelter, residential treatment facility (as defined by 20-A M.R.S.A. §1(24-A), state-operated institution, skilled nursing facility or intermediate care facility.

The costs for such services shall be paid directly by the Department of Education at 100 percent of the cost during the year in which the services

were provided upon receipt of appropriate statements from the administrative unit and subject to 20-A M.R.S.A. §15613.

The regional administrator of the responsible state agency or the member of the agency's staff identified as responsible for case management of the state ward and the foster parent or administrator of the residence are entitled to participate in any Pupil Evaluation Team meeting for the state ward.

If a state ward is placed in a residential treatment center, (as defined by 20-A M.R.S.A. §1(24-A)(D)(3)), the costs for such services shall be paid directly by the Department of Education at 100 percent of the cost during the year in which the services were provided upon receipt of appropriate statements from the residential treatment center and subject to 20-A M.R.S.A. §15613. Responsibility for the student shall remain with the school administrative unit which placed the student. These responsibilities include development of the student's Individualized Education Program (I.E.P.), annual review of the I.E.P. and a determination of future appropriate programs and placements. The school unit which placed the state ward in a residential treatment center shall retain responsibility for program monitoring, I.E.P. development, and annual review, until the state ward is discharged from the residential treatment center.

When a state ward has moved frequently between school administrative units, and there is a request for the P.E.T. to consider a residential placement of the state ward for educational reasons, the School Administrative Unit (S.A.U.) in which the state ward was last enrolled for a full academic quarter shall be the responsible S.A.U. to consider this request

4.4 State Agency Clients

A state agency client who is placed by a state agency in a residential placement other than a residential treatment center as defined in 20-A M.R.S.A. §1(24-A)(D)(3), shall be considered a resident of the school administrative unit where the residential placement is located.

A school unit shall provide special education services to any state-agency client who requires special education services and who resides within the unit's boundaries in a foster home, group home, therapeutic group home, emergency shelter, residential treatment facility, (as defined by 20-A M.R.S.A. §1(24-A), state-operated institution, skilled nursing facility or intermediate care facility.

The costs for such services shall be paid directly by the Department of Education at 100 percent of the cost during the year in which the services were provided upon receipt of appropriate statements from the administrative unit and subject to 20-A M.R.S.A. §15613.

The regional administrator of the responsible state agency or the member of the agency's staff identified as responsible for case management of the state agency client, the foster parent or administrator of the residence and the parents of the state agency client are entitled to participate in any Pupil Evaluation Team meeting for the state-agency client.

The placement of a state agency client for educational reasons in a residential treatment center shall be the responsibility of the school administrative unit in which the state agency client's parents reside. These responsibilities include the development of the student's Individualized Education Program (I.E.P.), the determination of the least restrictive educational alternative, the annual review of the I.E.P., program monitoring, and the determination of future educational programs and/or placements.

When a state agency client is placed in such a residential treatment center by an administrative unit, the student loses his/her state agency client status and the student becomes the financial and programmatic responsibility of the administrative unit in which the student's parent or legal guardian resides.

4.5 Institutional Residents

A school unit shall provide special education services to eligible students with disabilities who are residents of any state-operated institution within the unit's boundaries.

The administrator of the institution or another designated staff person shall be entitled to participate in the Pupil Evaluation Team meetings.

Tuition for students who are institutional residents and who receive special education services from an administrative unit or a special purpose private school shall be paid directly by the Department of Education at 100 percent of tuition costs during the year in which the services are provided upon receipt of appropriate statements from the administrative unit or the special purpose private school and subject to 20-A M.R.S.A. §15613.

4.6 Other Students

Students other than state wards, state agency clients, or institutional residents who are living with persons other than their parents or legal guardians, are eligible to attend school where they reside if the superintendent determines it is in the best interest of the student (in accordance with 20-A M.R.S.A. §5205(2) or the student transfers residence (in accordance with 20-A M.R.S.A. §5205(6)).

4.7 Responsibility for Students with Disabilities Enrolled by Their Parents in Private Schools or Receiving Home-Schooling

A. Child Find Responsibilities For Private School/Home Schooled Students - Each school administrative unit must locate, identify and evaluate all private school students, including religiously-affiliated school students, and home schooled students who have disabilities residing in the jurisdiction of the unit in accordance with §4.2, Resident Students.

B. Basic requirement - services - To the extent consistent with their number and location in the State, provision must be made for the participation of private school students/home schooled students who have disabilities in the program assisted or carried out under Part B of the IDEA by providing them with special education and supportive services in accordance with these rules.

C. Expenditures - To meet the requirement of these rules, each school administrative unit must spend on providing special education and supportive services to private school students/home schooled students with disabilities, an amount that is the same proportion of the S.A.U.'s total subgrant under §1411(g) of the IDEA as the number of private school students/home schooled students with disabilities aged 5 through 20 residing in its jurisdiction is to the total number of students with disabilities in its jurisdiction aged 5 through 20.

S.A.U.s are not prohibited from providing services to private school students/home schooled students with disabilities in excess of those required by these rules, consistent with State law or local policy.

D. Services determined - No individual right to special education and supportive services. No private school student/home schooled student with a disability has an individual right to receive some or all of the special education and supportive services that the student would receive if enrolled in a public school. Decisions about the services that will be provided to private school students/home schooled students with disabilities under these rules, must be made in accordance with this section.

Consultation with representatives of private school students/home schooled students with disabilities. Each S.A.U. shall consult, in a timely and meaningful way, with appropriate representatives of private school students/home schooled students with disabilities in light of the funding under this section, the number of private school students/home schooled students with disabilities, the needs of private school students/home schooled students with disabilities, and their location to decide which students will receive services under this section, what services will be provided, how the services will be provided, and how the services provided will be evaluated.

Genuine opportunity. – Each S.A.U. shall give appropriate representatives of private school students/home schooled students with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

Timing. – The consultation required by this section must occur before the S.A.U. makes any decision that affects the opportunities of private school students/home schooled students with disabilities to participate in services under these rules.

Decisions. – The S.A.U. shall make the final decisions with respect to the services to be provided to eligible private school students/home schooled students with disabilities.

E. Services provided - General. The services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools. Private school students with disabilities may receive a different amount of services than students with disabilities in public schools. No private school student with a disability is entitled to any service or to any amount of a service the student would receive if enrolled in a public school.

Services provided in accordance with a services plan. - Each private school student with a disability who has been designated to receive services under these rules must have a services plan that describes the specific special education and related services that the S.A.U. will provide to the student in light of the services that the S.A.U. has determined, through the process described in §§C and D above, it will make available to private school students with disabilities.

The services plan must, to the extent appropriate meet the requirements of §10.2, Individualized Education Program Components, with respect to the services provided; and be developed, reviewed, and revised consistent with Part 8, Pupil Evaluation Team Process, and Part 10, Individualized Education Program (I.E.P.).

F. Location of services - On-site. Services provided to private school students/home schooled students with disabilities may be provided on-site at a student's private school/home school, including a religiously-affiliated school, to the extent consistent with law.

Transportation. Transportation of private school students/home schooled students with disabilities to a site other than a student's private school/home school must be provided if necessary for a student to benefit from or participate in the other services offered. The cost of that transportation may be included in calculating whether the S.A.U. has met the requirement of these rules. School administrative units are not required to provide transportation from the student's home to the private school / home school, but only to the site where the services are offered,

and either return the student to the private school or to the student's home, depending on the timing of the services.

G. Complaints - Due process hearing inapplicable. – The due process hearing procedures in Part 13, Dispute Resolution Procedures, of these rules do not apply to allegations that an S.A.U. has failed to meet the requirements of this section, including the provision of services indicated on the student's I.E.P.

State complaints and mediations. – Complaints that an S.A.U. has failed to meet the requirements of this section may be filed under the complaint procedures in §13.5. Parents and schools may also use the mediation procedures in §13.4 to resolve a dispute.

H. Separate classes prohibited - An S.A.U. may not use funds available under §§1411 or 1419 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site; and the classes include students enrolled in public schools and students enrolled in private schools / home schools.

I. Requirement that funds not benefit a private school / home school. - An S.A.U. may not use funds provided under §§1411 or 1419 of the IDEA to finance the existing level of instruction in a private school / home school or to otherwise benefit the private school / home school. The S.A.U. shall use funds provided under Part B of the IDEA to meet the special educational needs of students enrolled in private schools / home schools, but not for the needs of a private school / home school; or the general needs of the students enrolled in the private school / home school.

J. Use of public school personnel - An S.A.U. may use funds available under §§1411 and 1419 of the IDEA to make public personnel available in other than public facilities to the extent necessary to provide services under this section for private school students/home schooled students with disabilities and if those services are not normally provided by the private school/home school.

K. Use of private school/home school personnel - An S.A.U. may use funds available under §§1411 or 1419 of the IDEA to pay for the services of an employee of a private school/home schools if the employee performs the services outside of his or her regular hours of duty and the employee performs the services under public supervision and control.

L. Requirements concerning property, equipment and supplies for the benefit of private school students/home schooled students with disabilities - A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under §§1411 or 1419 of the IDEA for the benefit of private school students/home schooled students with disabilities. The

public agency may place equipment and supplies in a private school for the period of time needed for the program. The public agency shall ensure that the equipment and supplies placed in a private school are used only for Part B purposes; and can be removed from the private school without remodeling the private school facility. The public agency shall remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes; or removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes. No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

4.8 Determination of Educational Responsibility

Any interested person may request that the Commissioner determine which administrative unit has educational responsibility for a particular student.

4.9 Educational Responsibility for Incarcerated Students With Disabilities

A. Responsibility for Students with Disabilities Incarcerated in County Jails – Educational responsibility, including child find activities, for students with disabilities incarcerated in county jails shall rest with the school administrative unit in which the student resided prior to the incarceration.

B. Responsibility for Students with Disabilities Incarcerated in State Prisons – The Department of Corrections is responsible for the education of eligible residents of facilities operated under their jurisdiction. This responsibility includes the responsibility for child find activities.

5. SPECIAL EDUCATION SERVICES

5.1 Continuum of Special Education Services

Each administrative unit shall ensure that a continuum of special education services is available to meet the needs of students with disabilities and shall ensure that special education services (such as consultation, monitoring, and direct instructional services) are available in conjunction with regular class placements, self-contained placements, and tutorial services, including hospital and homebound instruction.

Special education services may be provided directly by a school administrative unit, provided through a tuition arrangement with another school unit or private school with approved special education services, or provided in a regional center through a cooperative agreement between two or more school units. All such services must be approved by the

Commissioner. This section describes a variety of special education services and standards for approval.

5.2 Student-Teacher Ratios

The student-teacher ratios or caseloads contained within these regulations specify the maximum number of students who may be served by each full-time, certified special education teacher. A school administrative unit may, as a matter of local policy and in consideration of additional responsibilities assigned, specify a lower number of students to be served by each full-time, certified special education teacher.

5.3 Monitoring Services

Monitoring services shall be provided to students with disabilities who have been transitioned from a special education program into a regular education program. The purpose of monitoring services is to assist the student to effectively transition into a less restrictive educational alternative.

Monitoring services shall include regular observations and meetings between a certified special education teacher or certified special education consultant, the student and the student's teacher(s) to discuss the student's program and progress. The frequency of these meetings shall be determined by the P.E.T. but will be no less than quarterly. Monitoring services shall be included in the student's Individualized Education Program and the student shall be counted as part of the special education teacher's caseload. Monitoring services shall be limited to no more than one year.

When a special education teacher responsible for special education services also provides regularly scheduled consultation or monitoring services, the maximum caseload permitted shall be no greater than 35 students for each full-time equivalent, certified special education teacher.

5.4 Consultation Services

Consultation services may be provided to regular education teachers to assist them in modifying and/or adapting their regular education curriculum to serve students with disabilities. Consultation services shall be provided by a certified special education consultant or a certified special education teacher employed by the unit.

When consultation services are provided to assist a regular education teacher with a student with a disability, such consultation services shall be included in the student's Individualized Education Program.

Student-teacher ratio -The ratio of students to teacher shall be no greater than 35 students for each full-time equivalent, certified special education teacher providing consultation services.

5.5 Direct Instructional Services

A. Definition - Direct instructional services is instruction provided by an appropriately certified special education professional or an appropriately supervised educational technician consistent with a student's Individual Educational Program (I.E.P.).

B. Teacher qualifications -The teacher responsible for direct instructional services shall be certified as a special education teacher as required by Chapter 115 as amended (Certification Endorsements for Teachers).

C. Student-teacher ratio - Regular class and resource placements. - The ratio of students to each full-time equivalent certified special education teacher providing direct instructional services shall not exceed a total of 35 students for each special education teacher providing direct instructional services. No more than eight (8) students may be served at any one time.

During the time that auxiliary personnel work under the supervision of the certified special education teacher providing the direct instructional services, thirteen (13) students may be served, but the total caseload ratio shall not change (*see* §5.7, Supervision of Educational Technicians).

D. Student-teacher ratio - Self contained placements. - The following student-teacher ratios shall not be exceeded for self-contained services. The figures in parentheses represent the number of additional students who may be provided self-contained services during the time that one or more educational technicians work under the supervision of the certified special education teacher responsible for the program (*see* §5.7, Supervision of Educational Technicians).

Ages 5-9	6:1 (5)
Ages 10-14	8:1 (5)
Ages 15-20	10:1 (5)

NOTE: Classes for students with a severe to profound degree of impairment shall be staffed with a minimum of two (2) providers (i.e., one teacher and one educational technician) at all times to ensure the safety and well being of the students.

5.6 Qualified Staff

Any special education or supportive services provided to a student with a disability shall be considered as a part of the student's special education program, shall be specified in the student's I.E.P. and shall be provided by an appropriately certified special education teacher or licensed supportive services provider. An Educational Technician approved by the Office of Certification of the Department may provide special education services

when supervised by the certified special education teacher responsible for the program.

If a school administrative unit is unable to hire qualified staff for the provision of supportive services, the unit shall make an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel to provide supportive services to students with disabilities. In a geographic area of the State where there is a shortage of qualified personnel who meet the requirements of this section, the unit may hire the most qualified individuals available who are making satisfactory progress toward completing, within three years, the applicable course work necessary to meet the licensing standards described in §18.3, Costs of Qualified Personnel of these rules.

5.7 Supervision of Educational Technicians

An Educational Technician I, II, or III may not work with more than five students at any one time.

Educational Technicians I, II, and III shall be supervised by a certified special education teacher when providing special education services to students with disabilities and supervised by the classroom teacher or appropriate content specialist when assisting a student with a disability during integrated activities. Such supervision shall be as required by Maine Department of Education Regulations 115 with the following exception:

Any Educational Technician working as an interpreter for the deaf or a cued speech transliterator shall be supervised and monitored for progress toward completion of the training requirements consistent with the requirements of §6.7, Interpreter/Transliterator Services for Students with Disabilities.

5.8 Tutorial Services

Tutorial services shall be provided to any student with a disability who is unable to participate in an administrative unit's regular or special education classes as determined by the Pupil Evaluation Team consistent with the requirements of §11, Least Restrictive Educational Alternative.

Any tutorial services offered to a student with a disability shall be provided by an appropriately certified special education teacher, or by a certified regular education teacher, or by a substitute teacher for that administrative unit who has been previously registered as a substitute with the Office of Certification.

Tutorial services shall be determined on an individual basis by the Pupil Evaluation Team and shall consist of services necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's

I.E.P. Home-based tutorial services are usually appropriate for only a limited number of students, such as students who are medically fragile and are not able to participate in a school setting with other students.

If the duration of the tutorial services is anticipated to exceed 10 school days, a P.E.T. shall convene to develop a new Individualized Education Program.

Tutorial services in excess of 60 calendar days shall be provided by a certified special education teacher.

5.9 Extended School Year Services

Each school administrative unit shall ensure that extended school year services are available to each student with a disability to the extent necessary to ensure that a free appropriate public education is available to the student. Pupil Evaluation Team determinations to provide extended school year services, including special education and supportive services beyond an administrative unit's normal school year, shall be made on an individual basis and based on the probability that the student is at risk of losing skills previously mastered and unable to recoup those skills within a reasonable period of time.

Extended school year services shall be a part of the student's Individualized Education Program, shall be provided at no cost to the parents and meet the standards for provision of special education and supportive services specified in these rules.

An S.A.U. may not limit extended school year services to particular categories of disability nor unilaterally limit the type, amount or duration of those services.

5.10 Speech and Language Services

A Speech-Language pathologist licensed by the Maine Board of Examiners of Speech-Language Pathologists and Audiologists, or speech clinician certified by the Department may provide speech and language services if recommended by the Pupil Evaluation Team and included in the student's Individualized Education Program. The maximum student-therapist caseload, including both consultation and direct services, shall not exceed 50 for each full-time equivalent speech-language pathologist or speech clinician.

A certified speech clinician may provide speech and language services if employed by an administrative unit. A certified speech clinician shall also be licensed by the Maine Board of Examiners of Speech-Language Pathologists and Audiologists in order to provide contracted speech and language services (*see* §6.3, Contracted Special Education Services).

A speech-language pathology aide or assistant registered with the Board of Speech-Language Pathology and Audiology may provide speech and language services under the supervision of a licensed speech-language pathologist as required by 32 M.R.S.A. Chapter 77 and accompanying regulations relating to the practice of speech-language pathology.

5.11 Graduation

When the Pupil Evaluation Team is developing the Individualized Education Program of a student with a disability between the ages of 15 and 20 inclusive, the P.E.T. may make reasonable and appropriate adaptations of and accommodations to the state and local graduation requirements to reflect the unique skills and abilities of the student and shall specify in the student's Individualized Education Program the projected date of graduation.

Students who have completed the graduation requirements specified in their Individualized Education Program shall be eligible to receive a regular high school diploma unless the local school board has adopted specific, competency-based graduation requirements applicable to all students.

The administrative unit shall inform, in writing, both the parent and, when appropriate, the student that completion of the student's Individualized Education Program and consequent graduation and receipt of a regular high school diploma constitutes a termination of eligibility for special education services (*see* §12.3, Prior Written Notice).

A student's eligibility for F.A.P.E. ceases upon graduation from high school with a regular high school diploma. Graduation is considered to be a change in placement, and would require that prior written notice, in accordance with §12.3, be given to the parents and the student. The notice would inform the parents and the student of the termination of eligibility for special education services and of their right to challenge the student's pending graduation if they believe that the student has not met the requirements for graduation with a regular high school diploma. Students who exit school without a regular high school diploma continue to be eligible for special education services until they reach an age at which their eligibility terminates or they receive a regular diploma.

5.12 Waivers

The superintendent of a school administrative unit or the director of a private school serving students with disabilities may request a waiver of certain regulations relating to student-teacher ratios, caseload ratios or the location of special education programs in chronologically, age-appropriate settings.

All such requests:

A. Shall be in writing;

B. Shall include documentation of the unit's or school's efforts to achieve compliance;

C. Shall state the rationale for requesting the waiver;

D. Shall specify the corrective action to be taken to achieve compliance by the beginning of the next school year;

E. Shall include documentation of notification and opportunity to comment provided to the parents of all students with disabilities affected by the waiver request; and

F. Shall include a signed statement from the superintendent assuring that all students affected by the waiver are receiving a free, appropriate public education (F.A.P.E.) consistent with their I.E.P.s.

The Commissioner shall review and approve, modify, or disapprove all such requests for a waiver.

5.13 Transition Services

A. Content of Individualized Education Program - The Pupil Evaluation Team shall include within the Individualized Education Program of a student with a disability beginning no later than age 14 (or younger if determined appropriate by the P.E.T.), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's I.E.P. that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program).

For each student beginning at age 16 (or younger if determined appropriate by the P.E.T.) a statement of the needed transition services for the student including, when appropriate, a statement of the interagency responsibilities or any needed linkages.

B. Agency responsibilities for transition services - In the case where another agency other than the school administrative unit responsible for the student's education, fails to provide agreed upon transition services contained in the I.E.P. of a student with a disability, the school administrative unit shall reconvene the Pupil Evaluation Team, identify alternative strategies to meet the transition objectives and, if necessary, revise the student's I.E.P.

Nothing in these rules relieves any other agency, including the Maine Department of Human Services, the Maine Department of Mental Health, Mental Retardation and Substance Abuse Services, the Maine Department of Labor or the Bureau of Vocational Rehabilitation, of the responsibility to provide or pay for any transition service that the agency

would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

5.14 Physical Education

A. General - Physical education services, specially designed if necessary, must be made available to every student with a disability receiving a free appropriate public education. The term "physical education" means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adaptive physical education, movement education, and motor development.

B. Regular Physical Education - Each student with a disability must be afforded the opportunity to participate in the regular physical education program available to non-disabled students unless:

1. The student is enrolled full time in a separate facility; or

2. The student needs specially designed physical education, as prescribed in the student's Individualized Education Program.

C. Special Physical Education - If specially designed physical education is prescribed in a student's Individualized Education Program, the school administrative unit responsible for the education of that student shall provide the services directly, or make arrangements for them to be provided through other public or private programs.

D. Education in Separate Facilities - The school administrative unit responsible for the education of a student with a disability who is enrolled in a separate facility shall ensure that the student receives appropriate physical education services in compliance with paragraphs "A" and "C" of this section.

6. SUPPORTIVE SERVICES

6.1 General Principles: Need of Supportive Services

Supportive services are those services required to assist a student with a disability to benefit from special education services.

Supportive services must be identified in the student's Individualized Education Program and shall meet the following standards:

A. The service is an integral part of an educational objective (the service is required to assist the student with a disability to achieve the goals and objectives specified in the student's Individualized Education Program or the service is so intermixed with instruction that it has become an integral part of the instructional methodology used with a student, i.e., interpreter services); and,

B. The definition of supportive services applies equally to any student with a disability tuitioned by an administrative unit to a private special purpose school.

6.2 Exclusions (Medical Services and Treatment)

A. Medical Service, Treatment - Services or treatment performed by psychiatrists, physicians, optometrists, chiropractors, registered substance abuse counselors, or other medical personnel are not an allowable special education or supportive service.

B. Medical Evaluations - Medical evaluations that the Pupil Evaluation Team or administrative unit have determined to be necessary for the purpose of identifying a disability are an allowable supportive service and may be funded through the use of the unit's Local Entitlement Funds or through the use of third party payments with the consent of the parent.

6.3 Contracted Special Education Services

A. Use of independent contractors - If the P.E.T. determines that the provision of special education or supportive services are necessary to identify or provide for a student's special education needs and if the provider of such special education or supportive services is not an employee of the administrative unit, such services shall be provided in accordance with the terms of a written contract approved by the superintendent.

B. Contracts - School administrative units shall negotiate a written contract with any individual or agency from which they wish to obtain special education or supportive services.

The following data shall be included in each contract:

1. Total costs for services, listed in detail;

2. Nature and extent of consultation and/or evaluation services to be provided;

3. The name, social security number, and certification/licensure of the provider;

4. Provision for the pro-ration of charges and payments; and

5. Provisions for the timely exchange of essential information and individual student reports between the provider and the sending unit.

C. Credentials of independent contractors - When contracted special education or supportive services are provided to students, the individual providing the service shall be certified by the Department of Education as a special education consultant, special education director, school psychological service provider, or vocational education evaluator; or hold

a valid Maine license to practice in the areas of occupational therapy, physical therapy, audiology, speech-language pathology, psychology, counseling or social work.

Certification as a teacher of special education does not qualify the person to provide contracted special education services.

Contracted consultants who do not possess either certification or licensure as described in Paragraph C above, shall not provide special education services without prior written approval from the Department of Education Special Services Team. This waiver provision will be used only in exceptional circumstances such as out-of-state evaluations when there are no qualified providers available within the state and the individual has training and experience comparable to Maine standards for certification or licensure.

D. Annual report of contracted services - School units shall annually report all contracted special education service providers on the "Contracted Services Report" (EF-S-03 form) in the manner required by the Commissioner.

6.4 Audiology

Audiology services includes:

A. The identification of students with hearing loss;

B. The determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

C. The provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

D. The creation and administration of programs for prevention of hearing loss;

E. Counseling and guidance of students, parents, and teachers regarding hearing loss; and

F. Determination of a student's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

6.5 Counseling Services

A licensed clinical professional counselor (L.C.P.C.) licensed by the State Board of Counseling Professional Licensure may provide assessment, consultation, counseling and referral services to students with disabilities and their parents consistent with the laws and regulations governing the practice of professional counseling (32 M.R.S.A. Chap. 119).

6.6 Hearing Aids

Each school unit and private special purpose school shall identify all students using hearing aids and auditory trainers and establish procedures to ensure that the aids will be checked periodically to verify that they are functioning properly. Hearing aids will be checked no less than weekly by an individual assigned the responsibility and trained to identify typical malfunctions in hearing aids.

6.7 Interpreter/Transliterator Services for Students with Disabilities

A. An interpreter for a student who is disabled shall be registered with the Office of Licensing and Registration, Department of Professional and Financial Regulation, (32 M.R.S.A. Chap. 22 and accompanying regulations).

B. A cued speech transliterator shall be registered with the Office of Licensing and Registration, Department of Professional and Financial Regulation, (32 M.R.S.A. Chap. 22 and accompanying regulations).

6.8 Occupational Therapy, Physical Therapy Services

A licensed occupational therapist and licensed physical therapist may provide occupational or physical therapy services, respectively, if determined by the Pupil Evaluation Team and included in the student's Individualized Education Program. Such supportive services shall be required in order that the student may benefit from his/her special education program. The maximum student-therapist caseload, including both consultation and direct services, shall not exceed 50 students per each full-time equivalent provider.

Occupational therapy assistants and physical therapist assistants may provide services under the professional supervision of an appropriately licensed therapist as required by the laws and regulations regarding the practice of occupational therapy and physical therapy (32 M.R.S.A. Chapters 32 and 45-A and accompanying regulations).

Occupational therapy includes improving, developing or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss of function.

Physical therapy means services provided by a qualified physical therapist.

6.9 Orientation And Mobility Services

Orientation and mobility services means services provided to students who are blind or visually impaired by qualified personnel to enable those students to attain systematic orientation to and safe movement within their

environments in school, home, and community; and includes teaching students the following, as appropriate:

A. Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

B. To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

C. To understand and use remaining vision and distance low vision aids; and

D. Other concepts, techniques, and tools.

6.10 Parent Counseling And Training Means

Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's I.E.P.

6.11 Psychological Services

A certified school psychological service provider or psychologist licensed by the Board of Examiners of Psychologists may provide consultation services to students, school staff members and parents; evaluation services for students; behavior management including assisting in developing positive behavioral intervention strategies; and social skills training (including individual or group counseling for students). Psychologists may provide psychotherapy if required by a student with a disability and specified in the student's I.E.P.

6.12 Recreation Services

Recreation includes assessment of leisure function; therapeutic recreation services; recreation programs in schools and community agencies; and leisure education.

6.13 Rehabilitation Counseling Services

Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

6.14 School Health Services

School health services means services provided to a student with a disability by a certified school nurse or other qualified person as required by a student with a disability and specified in the student's I.E.P.

6.15 Social Work Service

A social worker licensed by the State Board of Social Work Licensure may provide social work services including preparing a social or developmental history of a student with a disability; group and individual counseling with the student and family; working with those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; and mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program and assisting in developing positive behavioral interventions and strategies.

A social worker licensed by the State Board of Social Work Licensure may provide social work services to students, school staff members, and parents consistent with the laws and regulations governing the practice of social work (32 M.R.S.A. Chap. 83 and accompanying regulations). The maximum student-therapist caseload shall not exceed 50 students per each full-time equivalent licensed social worker.

6.16 Special Education Equipment

Schools shall purchase and maintain educational, instructional or transportation equipment which is required by a student with a disability in order to participate in his or her educational program. Such equipment may include, but is not limited to, auditory trainers, communication aids and systems, computers, wheelchairs, ramps and lifts. Such purchases may be made with federal monies or as a local operating cost.

If the Pupil Evaluation Team determines that an assistive technology device or service is necessary for the provision of a Free, Appropriate Public Education and specifies the assistive technology device or service within the student's I.E.P., the school administrative unit is responsible for ensuring the provision of the assistive technology device or service at no cost to the parents.

On a case-by-case basis, the use of school purchased assistive technology devices in a student's home or in other settings is required if the student's Pupil Evaluation Team determines that the student needs access to those devises in order to receive a free appropriate public education.

The purchase or provision of personal hearing aids, eyeglasses, other corrective devices, specially trained service animals or supplies of a

personal or medical nature shall not be the responsibility of the administrative unit.

6.17 Transportation - Special Education

Special education transportation includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.

Special education transportation shall be specified by the Pupil Evaluation Team in the student's Individualized Education Program when the Team determines that the transportation is necessary in order for the student with a disability to benefit from an education program. The Pupil Evaluation Team shall determine any modifications and/or adaptations, including the employment of a "transportation aide," that need to be made to the unit's regular transportation services in order to ensure appropriate and accessible transportation services.

Special education transportation shall be provided consistent with Part 11, Least Restrictive Educational Alternative, of these rules; and 20-A M.R.S.A. §5401(4). Students with disabilities shall be provided transportation to and from classes or as specified in their Individualized Education Program. Carrying students into buildings or vehicles is not an acceptable method of achieving accessibility.

If the parent with whom a student with a disability is living has been asked and has agreed to transport the student to and/or from school, or to and/or from a contracted special education service provider, the administrative unit shall reimburse the parent for mileage and necessary travel expenses in accordance with school district employee reimbursement policies and provide such transportation at no cost to the parent. Reimbursement shall be made within 45 days of each trip, unless otherwise mutually agreed.

If a student with a disability is tuitioned to another public or private school for special education services, the sending unit shall provide transportation consistent with the calendar of the receiving school.

Any special education transportation services shall be described in a written contract or memorandum of agreement and approved by the Transportation/Construction Specialist in the Department of Education.

6.18 Transportation - Residential School

School administrative units which have placed students with disabilities in residential schools shall provide transportation to these students at the beginning and the end of the school year, on weekends if the school does not provide weekend residential services, and on regularly scheduled vacations and holidays that correspond to the calendar of the residential

school. Local administrative units shall provide for additional trips when determined by the Pupil Evaluation Team to be part of the student's Individualized Education Program.

In cases where the parents or guardian and the Pupil Evaluation Team determine that there is reason to transport the parents or guardian to the school during the holiday or vacation periods, this arrangement may be made in lieu of transporting the student to his residence.

If the parents of a student with a disability have been asked and agreed to transport the student to and/or from a residential school, the administrative unit shall reimburse the parents for mileage and necessary travel expenses in accordance with school district employee reimbursement policies and providing that such transportation is at no cost to the parent. Reimbursement to the parents shall be made within 45 days of each trip. If another means of transportation is procured, such as air or bus, the allowable rate shall be the actual cost.

Necessary travel expenses (such as tolls, parking, food and lodging) for the student and/or any required adult escort shall also be reimbursed in accordance with school district employee reimbursement policies.

7. CHILD FIND, REFERRALS

7.1 General Principles: Child Find Responsibilities

Each school unit has the responsibility for identifying, locating and evaluating all students within its jurisdiction who are in need of special education and supportive services including students with disabilities attending private schools and home schools, regardless of the severity of their disabilities. This child find responsibility shall be accomplished through a unit-wide process which, while not a definitive or final judgment of a student's capabilities or disability, is a possible indicator of special education needs. Final identification of students with disabilities and programming for such students occurs only after an appropriate evaluation and a determination by the Pupil Evaluation Team (*see* Part 9, Evaluation and Identification of Students with Disabilities).

7.2 Responsibility For Child Find

Each administrative unit shall ensure that all resident and other eligible students, including students who are enrolled in private schools or home schools, highly mobile students (migrant or homeless), students incarcerated in county jails and students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade, are identified, located and evaluated.

All students enrolled in the public schools of the unit or educated at public expense of the unit shall be identified, located and evaluated. A unit which tuitions (on a tuition or contract basis) some or all of its students is responsible for child find either through appropriate arrangements with the receiving unit or school or through direct child find services by unit personnel or contracted personnel.

Students who attend or will attend private schools at private expense or home schools shall be identified, located and evaluated at public expense.

7.3 Students Subject To Child Find

Each school unit shall identify, locate and evaluate all students enrolled in public school, private schools, or home schools during the first 30 days of the school year or during the first 30 days of enrollment for transfer students. This duty shall include all entering kindergarten students and transfer students of all ages and grade levels. If evidence of prior child find activities and a statement of the results can be found in the student's cumulative record, or the unit has reason to believe that the student has previously been identified as a student with a disability by another in-state or out-of-state school administrative unit, by Child Development Services or by an out-of state preschool special education service system, child find is not necessary.

NOTE: A unit may schedule child find in the spring prior to kindergarten enrollment to assist in planning for necessary special education and supportive services at the start of the school year. Child find for school aged students is an on-going requirement of each S.A.U.

7.4 Elements Of Child Find Activities

The child find process in each school unit shall include obtaining data on each student, through direct assessment or by indirect means of the student's academic performance, gross and fine motor skills, receptive and expressive language skills, vision, hearing and cognitive skills.

If appropriate, other areas of assessment may include: self-help, self-concept, social-emotional development and personal histories.

7.5 Responsible Staff

Staff assigned by an administrative unit to child find activities may include a variety of school personnel including classroom teachers, school nurses, and educational specialists.

7.6 Referral After Child Find; Notice Of Referral

If the child find process indicates that a student may require special education and supportive services in order to benefit from regular

education, the student shall be referred to the Pupil Evaluation Team to determine the student's eligibility for special educational services.

A student's failure of an auditory screening, as confirmed by auditory testing performed by a licensed physician or licensed audiologist, shall be referred to the Pupil Evaluation Team. The purpose of this referral is to determine if a program of auditory enrichment and/or special education is required to enable the student to benefit from his/her educational program.

If any referral is made to the Pupil Evaluation Team, including a referral requesting evaluation of existing data on the student, the parents of the student shall be sent written notice of the referral, as described in §12.3, Prior Written Notice, and shall provide informed prior written consent as required by §12.4, Parental Consent, before any action is taken on the referral.

7.7 Local Policy on Referral to Pupil Evaluation Team

Each unit shall develop a written policy, consistent with this rule, regarding referral to the Pupil Evaluation Team. All referrals to the Pupil Evaluation Team will be acted upon in a timely manner and a Pupil Evaluation Team shall convene within 15 school days of the receipt of the referral to review existing evaluation data and determine the need for additional evaluations (*see* §9.8, Determination of Needed Evaluation Data, and §9.9, Requirements if Additional Data Are Not Needed).

A. School staff referrals - Local policy on the referral of a student to the Pupil Evaluation Team shall include a means whereby any professional employee of the administrative unit may make such a referral regardless of the results of the initial child find activities.

B. Referral by parent - Parents may, at any time, refer their child to the Pupil Evaluation Team if they have reason to believe that the student may require special education and supportive services. Each such referral to the P.E.T. shall be acted upon in a timely manner. An S.A.U. may not require a parent to utilize a "pre-referral" or "Student Assistance Team" process prior to convening a P.E.T. meeting to review the parent's referral.

C. Referrals by others - Local policy shall establish a process whereby P.E.T. referrals may be initiated by individuals or agency representatives (including representatives from the Department of Human Services) with knowledge of a student. Such referrals shall be made by contacting a designated school official or employee, in accordance with local policy.

D. At risk students - Local policy shall establish a process whereby students "at risk" are identified, evaluated, and referred as appropriate to the P.E.T. Such students may include individuals who have accumulated

45 absences during a school year, have been suspended or removed in excess of 10 days during a school year, students who have experienced an illness or accident likely to cause neurological or emotional impairment, etc.

7.8 Records of Child Find Activities

For any student who is referred to the Pupil Evaluation Team as the result of child find activities, documentation in that student's cumulative record file shall specify:

A. The date, administrative unit, and the person who coordinated the child find activities;

B. A description or example of the child find activities procedures, forms, or instruments used; and

C. The results of the child find activities including any recommendations and/or referrals to the Pupil Evaluation Team.

When the results of a student's child find activities do not indicate a possible need for special education services, a notation shall be entered in his/her cumulative record file to the effect that he/she was reviewed for special education child find activities purposes, the date, and the administrative unit where the child find activities were conducted.

7.9 "Child Find"

Each school unit shall maintain procedures to ensure that all students between the ages of 3 and 20 years, including state wards, state agency clients, students attending private schools and home schools, and institutional residents who reside within its geographic jurisdiction and who are in need of special education and supportive assistance, are identified, located and evaluated. These procedures shall include a practical method of documenting which students with disabilities are currently receiving needed special education and supportive services, and identifying any unmet needs.

8. PUPIL EVALUATION TEAM PROCESS

8.1 Identification, Evaluation Process General Principles

The Pupil Evaluation Team, which includes the parent as an integral part of the team, is responsible for determining a student's eligibility for special education and supportive services; the development of an Individualized Education Program appropriate for the student; and the determination of the least restrictive educational alternative in which the Individualized Education Program may be implemented.

The Pupil Evaluation Team shall determine the need for evaluations and recommend such evaluations to the parent. Each administrative unit shall

develop local policies and procedures concerning the Pupil Evaluation Team process.

8.2 Pupil Evaluation Team (P.E.T.)

Each administrative unit with eligible students shall establish at least one Pupil Evaluation Team (P.E.T.) for the purpose of identifying the special needs of students and developing an appropriate Individualized Education Program for such students.

The superintendent of each unit shall designate one or more persons to receive and coordinate referrals to the unit's Pupil Evaluation Team, in accordance with the unit's policy for referrals to the Pupil Evaluation Team. All such referrals shall be transmitted in a timely fashion to the P.E.T. for consideration.

8.3 Major P.E.T. Responsibilities

The major responsibilities of a Pupil Evaluation Team are:

A. To review, as part of an initial evaluation (if appropriate) and as part of any reevaluation of a student, existing evaluation data including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and supportive services providers observation to determine, with input from the student's parents, what additional data, if any, are needed to determine whether a student is a student with a disability as defined in Part 3, Students With Disabilities, of these rules.

B. To determine the present levels of performance and educational needs of the student in all affected academic and non-academic areas.

C. To determine any necessary modifications and/or adaptations in the student's regular education program if existing data is insufficient to identify the student as eligible for special education services.

D. To develop or revise an Individualized Education Program (I.E.P.) to provide each identified student with a disability a free appropriate public education.

E. To review, at least annually, the Individualized Education Program of each student with a disability to:

1. determine whether the annual goals for the student are being achieved;

2. revise the I.E.P. as appropriate to address any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

3. consider the results of any reevaluation;

4. consider any information about the student provided to, or by, the parents;

5. consider the student's anticipated needs; or

6. consider any other matters.

This review may be conducted on the anniversary of the previous I.E.P. meeting or at the end of each school year.

F. To determine the least restrictive educational alternative in which to implement the student's I.E.P.

8.4 Scheduling of P.E.T. Meetings

Meetings of the Pupil Evaluation Team shall be scheduled at a time and place mutually agreed upon by the parents and the school to ensure that one or both parents of a student with a disability are present. If the parent is unable to attend a meeting, schools may use a conference call or individual telephone call to ensure parent participation.

The school unit shall take whatever action is necessary to ensure that the parent understands the proceedings of the meeting, including arranging for an interpreter for parents who are hearing impaired or whose native language is other than English.

A P.E.T. meeting may be conducted without a parent in attendance if the school is unable to convince the parents that they should attend. In such cases, the unit shall maintain a record of its efforts to arrange a mutually agreed upon time and place. Such records may include detailed records of telephone calls, correspondence, home visits, etc.

8.5 Parental Notice of P.E.T. Meetings

The school unit shall provide at least 7 days prior notice of each P.E.T. meeting to the parents of each student with a disability. Such notice shall be early enough to ensure that the parents will have an opportunity to attend. The notice shall indicate the purpose, time, location of the meeting, who will be in attendance, a notice of the procedural safeguards specified in this rule, the parent's right to be a member of the P.E.T. and the parent's right to invite other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate.

A copy of the notice of the Pupil Evaluation Team meeting shall be placed in the student's cumulative file.

Parents shall be notified and provided copies of evaluations or other reports to be discussed at the P.E.T.

If the purpose of the P.E.T. meeting is consideration of transition services for a student, the notice must also indicate this purpose, indicate that the

agency will invite the student, and identify any other agency that will be invited to send a representative.

This parental notice of P.E.T. meetings is required by federal regulations at 34 C.F.R. 300.345, "Parent participation". This is NOT the prior written notice required by regulation 12.3, "Prior Written Notice" and 34 C.F.R. 300.503, "Parent notice by the public agency".

8.6 P.E.T. Membership

Each Pupil Evaluation Team shall include the following members:

A. The student's parents;

B. At least one regular education teacher for the student (if the student is, or may be, participating in the regular education environment);

C. The student's special education teacher or a teacher qualified to provide the special education services for which the student has been referred;

D. A representative of the school administrative unit who can ensure the provision of the special education and supportive services specified in the student's Individualized Education Program and who:

1. is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;

2. is knowledgeable about the general curriculum;

3. is knowledgeable about the availability of resources of the local educational agency; and

4. has written authorization to obligate the unit's human and fiscal resources.

E. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the student, including supportive services personnel as appropriate;

F. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (B) through (E);

G. Whenever appropriate, the student; and

H. The student's caseworker from the Department of Human Services; Department of Mental Health, Mental Retardation and Substance Abuse Services; or Department of Labor, Bureau of Rehabilitation when the caseworker is known to the administrative unit.

The determination of knowledge or special expertise of an individual described in §8.6(E) shall be made by the party (parent or public agency) who invited the individual to be a member of the P.E.T.

8.7 Requirement With Respect To Regular Education Teacher

The regular education teacher of the student, as a member of the P.E.T., shall, to the extent appropriate, participate in the development, review and revision of the I.E.P. of the student, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel.

8.8 P.E.T. Meetings – Transition Services

A. If a purpose of the meeting is the consideration of transition services for a student, the public agency shall invite the student; and a representative of any other agency that is likely to be responsible for providing or paying for transition services.

B. If the student does not attend, the public agency shall take other steps to ensure that the student's preferences and interests are considered.

C. If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

8.9 Minutes of P.E.T. Meeting

Each unit shall maintain minutes of all P.E.T. meetings concerning the referral, evaluation, identification, programming and placement of a student with a disability. The minutes shall include the purpose of the meeting, the name and title of each member, a summary of the discussions, and the determinations of the P.E.T. Any dissenting opinions may be included within the minutes or attached to the minutes. A copy of the P.E.T. minutes will be provided within 21 school days of the date of the meeting to the parents and any member who requests a copy. A copy will be placed in the student's cumulative file.

8.10 Audio Recording of P.E.T. Meetings

Parents shall be permitted to audio record any P.E.T. meeting regarding their child at their own expense. Schools may also audio record P.E.T. meetings in which case the recording becomes an educational record subject to the provisions of Part 15, Education Records, of these rules.

8.11 P.E.T. Decision-Making Process

The P.E.T. meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding:

A. the student's needs and appropriate goals;

B. the extent to which the student will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and

C. the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the Pupil Evaluation Team must consider the parents' concerns and the information that they provide regarding their child in determining eligibility; developing, reviewing, and revising I.E.P.s; and determining placement.

The Pupil Evaluation Team should work toward consensus, but the S.A.U. has ultimate responsibility to ensure that a student is appropriately evaluated; that the I.E.P. includes the services that the student needs in order to receive F.A.P.E.; and that the student's placement is in the least restrictive educational alternative. It is not appropriate to make evaluation, eligibility, I.E.P. or placement decisions based upon a majority "vote." If the team cannot reach consensus, the S.A.U. must provide the parents with prior written notice of the school's proposals or refusals, or both, regarding their child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step, without resort to a due process hearing. However a mediation or other informal procedure may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under these rules.

9. EVALUATION AND IDENTIFICATION OF STUDENTS WITH DISABILITIES

9.1 Identification, Evaluation Process

The development of an Individualized Education Program, the placement of each student with a disability within a special education program, and the provision of a free appropriate public education shall be preceded by an identification and evaluation procedure which focuses on the student's individual needs and determines if the student qualifies as a student with a disability. This process is managed by the Pupil Evaluation Team within each school administrative unit.

9.2 Basis for Identification

When identifying the special education needs of students, the Pupil Evaluation Team shall make its determinations based on a full and individual evaluation of the student.

The Pupil Evaluation Team shall ensure that the student is assessed in all areas related to the suspected disability including, when appropriate, health, vision, hearing, social and emotional status, behavior, general intelligence, academic performance, communicative status, and motor abilities.

The P.E.T. may decide on further evaluations, modifications and/or adaptations in the regular education program if the existing data or information does not support the student's identification as a student with a disability.

No single evaluation, diagnostic procedure, or source of data shall be used as the sole criterion to determine a student's need for special education. Both measured evidence (as from testing) and evidence based on classroom observations and classroom-based performance shall be used in making this determination.

Valid and reliable evaluative instruments and techniques that yield a description of the student as a learner shall be used. The focus of evaluations shall be on observable and measurable performance rather than causality or etiology. The assessment of functional skills and the development of chronologically age-appropriate skills in a normalized, integrated setting shall be the basis for evaluation recommendations. Any modification and/or adaptation of the regular education program and support for the regular classroom teachers should be specified in the evaluation recommendations.

9.3 Consent for Initial Evaluation

If an evaluation is recommended by the Pupil Evaluation Team and precedes the student's initial provision of special education and supportive services, then written consent, as defined in §12.4, Parental Consent, shall be obtained from the parent or legal guardian of the student before the evaluation is conducted.

9.4 Determination of Eligibility

Upon completion of administration of tests and other evaluation materials the determination of whether the student is a student with a disability as defined in Part 3, Students with Disabilities, shall be made by the Pupil Evaluation Team. If the P.E.T. has determined that there is no need for additional evaluations to determine eligibility consistent with §9.9, Requirements if Additional Data are Not Needed, the P.E.T. shall make a determination of eligibility. In making a determination of eligibility under

this section, a student shall not be determined to be a student with a disability if the determining factor for such a finding is a lack of instruction in reading or math or due to limited English proficiency.

A copy of any evaluation report used in this determination and the documentation of determination of eligibility shall be provided to the parents.

A school administrative unit shall evaluate a student with a disability in accordance with these rules before determining that the student is no longer a student with a disability.

9.5 Evaluation Procedures

In conducting an evaluation, the school administrative unit shall:

A. Use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the student is a student with a disability and the content of the student's individualized education program, including information related to enabling the student to be involved in and progress in the general curriculum;

B. Not use any single procedure as the sole criterion for determining whether a student is a student with a disability or determining an appropriate educational program for the student; and

C. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Additional evaluation requirements:

A. Each school administrative unit shall ensure that tests and other evaluation materials used to assess a student under this section are selected and administered so as not to be discriminatory on a racial or cultural basis; and are provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so.

B. Any standardized tests that are given to the student shall have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel who meet state licensure or certification standards, and are administered in accordance with any instructions provided by the producer of such tests.

C. The student shall be assessed in all areas of suspected disability or disabilities.

D. Each school administrative unit shall ensure that only those assessment tools and strategies are used that provide relevant

information that directly assists the pupil evaluation team in determining the educational needs of the student.

9.6 Classroom Observation

Any initial evaluation or reevaluation of a student shall include an observation of the student's educational performance in the regular classroom setting or other area as identified by the P.E.T. or administrative unit by an evaluator other than the student's regular teacher.

The student observation shall compare the student's educational performance with other students of comparable age and identify those issues that are adversely affecting the student's ability to benefit from the regular education program.

In the case of a student of less than school age, out of school or not in a regular education placement, the observation shall be made in a chronologically age-appropriate environment.

9.7 Qualifications of Evaluators

Any person who provides an assessment or evaluation recommended by the Pupil Evaluation Team shall meet the professional qualifications of the publisher of the evaluation or assessment. Each evaluation or assessment shall be administered by trained personnel in conformance with the instructions provided by the publisher.

Qualified evaluators include certified school psychological service providers, special education teachers, special education consultants, speech clinicians, vocational evaluators and licensed audiologists, occupational therapists, physical therapists, psychologists, social workers, clinical professional counselors and speech-language pathologists. Aides, assistants or technicians are not considered qualified evaluators and may not administer, score, or interpret evaluations unless they hold appropriate certification or licensure.

The administration, scoring and interpretation of tests of academic, cognitive, behavioral and personality functioning, including, but not limited to, the Woodcock-Johnson Psycho-Educational Battery, the Kaufman Assessment Battery for Children, norm-referenced behavior rating or adaptive behavior scales, the Wechsler Intelligence Scales, the Stanford-Binet, the Thematic Apperception Test, MMPI, and the Rorschach, shall be conducted by qualified evaluators. Qualified evaluators shall have successfully completed appropriate training in each assessment area in which they conduct evaluations.

9.8 Determination of Needed Evaluation Data

As part of an initial evaluation (if appropriate) and as part of any reevaluation, the Pupil Evaluation Team and other qualified professionals, as appropriate, shall--

A. review existing evaluation data on the student, including evaluations and information provided by the parents of the student, current classroom-based assessments and observations, and teacher and supportive services provider's observations; and

B. on the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

1. whether the student has a disability, as described in Part 3, Students With Disabilities, or, in case of a reevaluation of a student, whether the student continues to have such a disability;

2. the present levels of performance and educational needs of the student;

3. whether the student needs special education and supportive services, or in the case of a reevaluation of a student, whether the student continues to need special education and supportive services; and

4. whether any additions or modifications to the special education and supportive services are needed to enable the student to meet the measurable annual goals set out in the individualized education program of the student and to participate, as appropriate, in the general curriculum.

Source of data – The school administrative unit shall administer such tests and other evaluation materials as may be needed to produce the data identified by the Pupil Evaluation Team under paragraph (B)(1).

9.9 Requirements If Additional Data Are Not Needed

If the members of the P.E.T. and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student with a disability, the school administrative unit shall notify the student's parents of the determination that additional evaluation data are not needed, the reasons for the determination; and the right of the parents to request an assessment to determine whether the student continues to be a student with a disability. If the parents request such an assessment, the school administrative unit shall conduct the assessment as required by §9.17, Time Limits for Evaluations.

9.10 Evaluation; Notice of Proposed Evaluation

If at any time the Pupil Evaluation Team determines that additional professional evaluation of a student will better enable the P.E.T. to develop or revise a student's Individualized Education Program, it may recommend such evaluation to the parent.

Parental notice – The parent shall be provided prior written notice of the proposed evaluation, as described and defined in §12.3. This notice shall identify and describe, whenever possible, the specific evaluations or diagnostic procedures intended to be used. An evaluator may, based on clinical judgment, administer additional assessments or evaluations in addition to those specified in the notice.

9.11 Re-evaluation

A re-evaluation of each student who receives special education and supportive services shall be conducted at least once every three years, or more frequently if conditions warrant or if the student's parent or teacher requests an evaluation.

The purpose of such re-evaluation is to determine if the student continues to be a student with a disability in need of special education and to determine if the student continues to demonstrate the original disability as identified by the P.E.T.

Any such re-evaluation shall be subject to all the regulations and professional standards of the initial pre-placement evaluation. Parental notice and parental consent are required.

NOTE: This requirement for re-evaluation is not the same as the required annual review of the student's Individual Education Program, described in §8.3, Major P.E.T. Responsibilities.

9.12 Parental Consent for Reevaluation

Each school administrative unit shall obtain informed parental consent, in accordance with §12.4, prior to conducting any initial evaluation or reevaluation of a student with a disability, (*see* §9.3, Consent for Initial Evaluation).

Parental consent – Each school administrative unit shall obtain informed parental consent, in accordance with §12.4, prior to conducting any reevaluation of a student with a disability, except that such informed parental consent need not be obtained if the school administrative unit can demonstrate that it has taken reasonable measures to obtain such consent and the student's parent has failed to respond.

9.13 Reports of Evaluation

To aid in obtaining appropriate and helpful evaluation reports, the Pupil Evaluation Team shall indicate when making a referral for evaluation:

A. The disability of concern;

B. How the disability is demonstrated within the school or classroom setting;

C. The information the P.E.T. desires from the evaluator in order to plan an appropriate program for the student; and

D. Any other information deemed relevant by the P.E.T.

The Pupil Evaluation Team shall require each person or agency completing an evaluation or diagnostic service recommended by the P.E.T. to submit a written evaluation report no later than 45 school days of the decision to evaluate and prior to the P.E.T. meeting scheduled to review the evaluation.

Each report shall:

A. Summarize the evaluation procedures employed;

B. Specify the results of each evaluation;

C. Summarize the evaluation results and diagnostic impressions; and

D. Specify the educational recommendations necessary to accommodate the student's special education needs.

Evaluation reports shall not make either eligibility or placement determinations since these deliberations are the responsibility of the Pupil Evaluation Team.

This evaluation report shall be placed in the student's cumulative record file.

The P.E.T. shall only accept evaluation reports that conform with the above description and aid the P.E.T. in developing an appropriate Individualized Education Program for the student.

A copy of the evaluation report will be provided to the parent a reasonable time prior to the P.E.T. meeting at which the evaluation is discussed.

9.14 Vocational Evaluations

Every student with a disability between 12 and 20 years of age shall be provided an opportunity for an interest and aptitude evaluation. Such evaluations may include job sampling and practical experiences if determined to be appropriate. Such vocational evaluations may be provided by certified Vocational Education Evaluators or other qualified evaluators. The purpose of the vocational evaluation is to assist the P.E.T. to identify deficits in work skills and behaviors that would interfere with appropriate educational programs and services that would be reasonably expected to result in the gainful employment of the student.

Based on the results of such an evaluation, a component of the student's Individualized Education Program shall be developed to include special education, supportive services and vocational services necessary to accomplish the identified vocational goals. A representative of the appropriate regional vocational agency or program shall be involved in the development of this component of the student's Individualized Education Program.

9.15 Additional Procedures For Evaluating Students With Specific Learning Disabilities

A. Additional team members - The determination of whether a student suspected of having a specific learning disability is a student with a disability as defined in §3.11, must be made by the student's parents and a team of qualified professionals which must include the student's regular teacher; or if the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of his or her age; or for a student of less than school age, an individual qualified to teach a student of his or her age; and at least one person qualified to conduct individual diagnostic examinations of students. Special education teachers, special education consultants, school psychological service providers, speech clinicians, speech-language pathologists, or remedial reading teachers etc., may be appropriate depending on their training and experience.

B. Criteria for determining the existence of a specific learning disability - A team may determine that a student has a specific learning disability if the student does not achieve commensurate with his or her age and ability levels, in one or more of the areas listed in this section, if provided with learning experiences appropriate for the student's age and ability levels; and the team finds that a student has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

1. Oral expression.
2. Listening comprehension.
3. Written expression.
4. Basic reading skill.
5. Reading comprehension.
6. Mathematics calculation.
7. Mathematics reasoning.

The team may not identify a student as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of

1. A visual, hearing, or motor impairment;
2. Mental retardation;
3. Emotional disability; or

4. Environmental, cultural or economic disadvantage.

C. Observation - At least one team member other than the student's regular teacher shall observe the student's academic performance in the regular classroom setting. In the case of a student of less than school age or out-of-school, a team member shall observe the student in an environment appropriate for a student of that age.

D. Written report - For a student suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by §9.4, Determination of Eligibility, must include a statement of:

1. Whether the student has a specific learning disability;
2. The basis for making the determination;
3. The relevant behavior noted during the observation of the student;
4. The relationship of that behavior to the student's academic functioning;
5. The educationally relevant medical findings, if any;
6. Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
7. The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

9.16 Non-discriminatory Assessment

Tests and other evaluation materials used to assess a student shall be selected and administered so as not to be culturally or racially discriminatory. Tests and other evaluation materials shall be provided and administered in the student's native language or other mode of communication unless not feasible to do so. When evaluating a student whose linguistic, economic or cultural background is different from that of the population within which a particular test or diagnostic procedure was developed or normed, the written summary of the evaluation described at §9.13, Reports of Evaluation, shall show how these differences were compensated for by the use of additional, more appropriate tests or procedures or the interpretation of the results of the evaluation.

9.17 Time Limits for Evaluation

Each school administrative unit shall ensure that evaluations are completed, an eligibility determination completed and an offer of services

in accordance with an I.E.P. is made to parents within 45 school days of the agency's receipt of parental consent to an initial evaluation.

In meeting the timeline in the above paragraph, a meeting to develop an I.E.P. for the student shall be conducted within 30 days of a determination that the student needs special education and supportive services.

If a recommended evaluation precedes a student's initial identification as a student with a disability, thereby requiring prior written parental consent, the administrative unit shall provide the parent with a consent for initial evaluation form after the members of the P.E.T. review existing evaluation data, (*see* §9.8, Determination of Needed Evaluation Data) but no later then 15 school days after the referral of the student for an evaluation.

Administrative units may use the hearing procedures to secure an override of a parental refusal to consent to an initial evaluation. An administrative unit may proceed with a reevaluation if the parents have failed to respond to a good faith effort by the unit to secure parental consent for reevaluation.

If a parent has requested an independent educational evaluation, such evaluation shall be completed without unnecessary delay after the determination of the administrative unit to provide an independent educational evaluation (*see* §9.19, Independent Educational Evaluation).

9.18 Absence of Parental Consent

If it is not possible to obtain parental consent for an initial evaluation or a reevaluation to determine eligibility for special education and supportive services, an administrative unit may use the mediation or hearing procedures described in Part 13, Dispute Resolution Procedures, to determine if the student may be initially evaluated or reevaluated without parental consent.

Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent has failed to respond.

9.19 Independent Educational Evaluation

The parents of a student with a disability have the right to obtain, at public expense, an independent educational evaluation of their child when they disagree with an evaluation obtained by the administrative unit, subject to this rule (*see* §12.5, Evaluation Procedures).

If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either initiate a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense,

unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria.

An independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question.

Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

Each school administrative unit shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

If a parent requests an independent educational evaluation, the S.A.U. may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

An "independent educational evaluation," (regardless of whether it is obtained at public expense), shall be performed by an appropriately qualified evaluator, as defined by these rules (*see* §6.3, Contracted Special Education Services and §9.7, Qualifications of Evaluators), who is not an employee of the administrative unit and who is qualified to provide such educational evaluations.

Qualified individuals in private practice under contract with an administrative unit who have not previously evaluated, instructed or provided consultation regarding a particular student are eligible to provide an independent educational evaluation of the student.

9.20 Nondisabled Students

In cases where the Pupil Evaluation Team determines that a referred student is not a student with a disability, as defined in this rule, they may recommend appropriate programs or services other than special education such as alternative education or modifications and adaptations of the student's regular education program or curriculum.

10. INDIVIDUALIZED EDUCATION PROGRAM (I.E.P.)

10.1 General Principles; Necessity for an Individualized Education Program

Once a student has been identified as a student with a disability, the education deemed appropriate for him/her must be defined in a written Individualized Education Program (I.E.P.). The I.E.P. is the basis for educational programming and placement of the student with a disability

and must be linked to the general education curriculum. It is not a guarantee of a student's educational progress or a contractual arrangement but does provide a statement of educational goals and objectives which all school personnel shall make good faith efforts to achieve.

10.2 Individualized Education Program Components

Each Individualized Education Program shall contain the following components:

A. A statement of the student's present level of educational performance including how the student's disability affects the student's involvement and progress in the general curriculum;

B. A statement of measurable annual goals including benchmarks or short-term objectives, relating to meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum and meeting each of the student's other educational needs that result from the student's disability; and

C. A section describing the specific special education and supportive services and supplemental aids and services to be provided to the student, or on behalf of the student, the amount of each service, and the staff positions responsible for providing the services and a statement of the program modifications or supports for school personnel that will be provided to the student:

1. to advance appropriately toward attaining the annual goals;

2. to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and

3. to be educated and participate with other students with disabilities and students without disabilities.

D. The dates of initiation, frequency, location and duration of the special education and supportive services, supplemental aids and services and modifications (not to exceed 12 months);

E. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in extracurricular and other nonacademic activities (*see* §11.2, Criteria – Least Restrictive Educational Alternative);

F. A summary of any necessary special education transportation;

G. A statement of how the student's progress toward the annual goals described in (B) will be measured and how the student's parents will be regularly informed (by such means as periodic report cards), at least as often as parents of children without disabilities are informed, of their child's progress toward their annual goals and the extent to which that

progress is sufficient to enable the student to achieve the goals by the end of the year;

H. A statement of any individual accommodations or modifications in the administration of the Maine Educational Assessment (MEA) and district wide assessments determined by the P.E.T. that are needed in order for the student to participate in the assessment. If the P.E.T. determines that the student will not participate in the MEA, a statement of why the MEA is not appropriate for the student and how the student will be assessed will be specified within the student's I.E.P.;

I. Beginning at age 14 and updated annually, a statement of the transition service needs of the student including a statement of any interagency responsibilities and any needed linkages, (*see* §5.13, Transition Services); and

J. Beginning at least one year before the student reaches age 18 (the age of majority), a statement that the student has been informed of the special education rights under State or Federal law that will transfer to the student.

A complete copy of the Individualized Education Program shall be provided to the parent within 21 school days of the P.E.T. Meeting at which the I.E.P. was developed.

10.3 P.E.T. Considerations in Developing an I.E.P.

In developing or revising each student's I.E.P. the P.E.T. shall:

A. Consider the strengths of the student and the concerns of the parents for enhancing the education of their student;

B. Consider the results of the initial or most recent evaluation of the student;

C. As appropriate, the results of the student's performance on any general state or district-wide assessment;

D. In the case of a student whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

E. In the case of a student with limited English proficiency, consider the language needs of the student as these needs relate to the student's I.E.P.;

F. In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the Pupil Evaluation Team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use

of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;

G. Consider the communication needs of the student, and in the case of a student who is deaf or hard-of-hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and

H. Consider whether the student requires assistive technology devices and services.

10.4 Notification of Change of Program

The parent of each student with a disability for whom an Individualized Education Program is developed shall be sent prior written notice as described and defined in §12.3 before the implementation of the student's Individualized Education Program.

Notification shall be repeated in the event of a proposal that the Individualized Education Program be terminated or significantly altered. Changes that significantly alter an Individualized Education Program and require a Pupil Evaluation Team meeting to develop a new Individualized Education Program and prior written notice shall include:

A. The addition of new services to a student with a disability;

B. A significant change in the amount or frequency of services provided which exceeds 10 school days;

C. The termination (including graduation) of previously provided services; and

D. A change in the educational goals and/or objectives in the Individualized Education Program.

10.5 Implementation of the Individualized Education Program

Each school administrative unit shall implement a student with a disability's Individualized Education Program as soon as possible following the P.E.T. meeting but no later than 30 days after the P.E.T.'s initial identification of the student as a student with a disability in need of special education and supportive services. All identified students with disabilities shall have a current Individualized Education Program in effect at the start of each school year.

If a school unit is unable to hire or contract with the professional staff necessary to implement a student's Individualized Education Program, the administrative unit shall reconvene a P.E.T. to identify alternative service options. This P.E.T. meeting shall occur no later than 30 days after the

start of the school year or the date of the P.E.T.'s development of the I.E.P. The P.E.T. shall determine the compensatory services, if any, necessary to compensate for the lack of services and to ensure the provision of a free appropriate public education.

10.6 Individualized Education Program Requirements in Private or Out-of-Unit Placements

Before a Pupil Evaluation Team decides to place a student with a disability in a private school or in another administrative unit, it shall initiate and conduct a meeting to develop an Individualized Education Program for the student. A representative of the receiving school shall be involved in this meeting. If the representatives cannot attend the meeting, the P.E.T. shall use other methods, such as individual or conference telephone calls, to ensure participation by the receiving school.

Any out-of-unit placements shall be as close to the student's home as possible.

10.7 Revision of Out-of-Unit Individualized Education Programs

The sending school is the school administrative unit which has administrative responsibility for the education of a student with a disability who has been placed by the sending school in an out-of-district placement. The receiving school is the school administrative unit, private special purpose school or private school which has accepted the tuition placement of a student with a disability from another school administrative unit.

The sending school is responsible for:

1. Initiating the required annual review of the student's I.E.P. and placement;

2. Revising the student's Individualized Education Program; and

3. Ensuring compliance with these rules.

Nothing in this section shall relieve the receiving school of its obligation to implement a student's I.E.P. or to comply with these rules or the Individuals with Disabilities Education Act.

Once a student with a disability has been placed out-of-unit, representatives of the receiving school shall request the sending school to initiate a P.E.T. meeting when the receiving school proposes to revise the student's Individualized Education Program. The sending school shall schedule the P.E.T. at a mutually convenient time for all parties and shall notify the receiving school and the parents of the meeting, as described and defined in §8.5, Parental Notice of P.E.T. Meetings. A copy of each such notification shall also be sent by the sending school to the receiving school unit.

The sending school shall participate in any meetings related to proposed changes in the student's Individualized Education Program, and shall ensure the parent's involvement in the meetings. The parent must be provided prior written notice of any proposed changes and both the sending school and the parent must agree to any proposed changes prior to the initiation of implementation of any changes in the student's Individualized Education Program.

10.8 Individualized Education Program Coordination Between Administrative Units

The same sequence of activities relating to Individualized Education Program development and the same shared and separate responsibilities described in the two immediately preceding sections shall apply in cases where one administrative unit tuitions some or all of its students to schools operated by another administrative unit, or to a private general purpose school under contract with the school unit.

10.9 Transfer Students

Students who received special education and supportive services in another school, Child Development Services, or Early Intervention Service Provider (if transferring from another state's preschool early intervention system) or school unit within or outside of the State shall, on transfer and with prior written notice to the parent, be provided with special education and supportive services consistent with the Individualized Education Program (I.E.P.)/ Individual Family Service Plan (I.F.S.P.) developed at the previous school, Child Development Services or Early Intervention Service Provider and shall be referred to the receiving unit's Pupil Evaluation Team.

Upon referral, the Pupil Evaluation Team shall convene as soon as possible to review available evaluation information, determine the need for additional evaluations, determine the student's disability and need for special education and supportive services, and develop a revised Individualized Education Program, if necessary, for the student.

10.10 Transition From Child Development Services To Public School Service

Students participating in the Child Development Services/Early-Intervention Programs and who will participate in public school programs shall experience a smooth and effective transition from those preschool programs to the public school. Each such student transitioning from CDS to a public school shall have an I.E.P. in effect at the start of the school year. A school administrative unit may elect to implement the student's I.F.S.P. upon entry into the public school and develop the student's I.E.P. upon the anniversary date of the I.F.S.P. The school administrative unit shall participate in transition planning conferences arranged by the Child Development Services site responsible for the student.

11. LEAST RESTRICTIVE EDUCATIONAL ALTERNATIVE

11.1 Least Restrictive Educational Alternative, Generally

To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, shall be educated with students who are not disabled, and special classes, separate schooling, or other removal of students with disabilities from the regular educational environment shall occur only when the nature or severity of the disability of a student is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

11.2 Criteria – Least Restrictive Educational Alternative

Each Individualized Education Program shall be developed in accordance with the principle of the least restrictive educational alternative. Criteria for the determination of the least restrictive educational alternative shall include the following:

A. A special education placement shall be based on the student's Individualized Education Program and shall be reviewed at least annually;

B. A student with a disability shall be placed in the school the student would normally attend unless the Individualized Education Program requires a different placement. In such a case, the placement shall be as close as possible to the student's residence;

C. A student with a disability shall be removed from the regular educational environment only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;

D. The facilities and accommodations available at a proposed placement shall be comparable to those available at the school the student would typically attend;

E. A student with a disability shall be educated with nondisabled peers and be provided an opportunity to participate in non-academic and extracurricular activities to the maximum extent appropriate; and

F. In selecting the least restrictive educational alternative, consideration will be given to the potential harmful effect on the student or on the quality of services that he or she needs.

11.3 Continuum of Special Education Placements

Each administrative unit shall ensure that a continuum of special education placements is available to meet the needs of students with disabilities and shall ensure that special education services and

supportive services are available in conjunction with a continuum of special education placements.

A continuum of special education placements shall include regular classes, resource classes, self-contained classes, public separate day school classes, private separate day school placements, public residential placements, private residential placements, and homebound/hospital placements.

Comparable Facilities – Facilities in which special education services are provided to students with disabilities shall be comparable to those in which regular education is provided to regular education students and located in chronologically age appropriate settings.

11.4 Regular Class Placement

A Regular Class Placement is a placement where a student with a disability receives a majority of their educational program with non-disabled students, receiving special education and supportive services OUTSIDE THAT CLASSROOM for less than 21 percent of the school day. This may include students with disabilities placed in regular class with special education/supportive services provided within the regular class, or regular class with instruction within the regular class and with special education/supportive services provided outside the regular class. Students receiving monitoring services are included in this category.

11.5 Resource Class Placement

A Resource Class Placement is a placement where a student with a disability receives special education and supportive services OUTSIDE THE REGULAR CLASSROOM for 60 percent or less of the school day and at least 21 percent of the school day. This may include students with disabilities placed in resource rooms with special education/supportive services provided within the resource room, or resource rooms with part-time instruction in a regular class. Resource classes shall be located in chronologically age appropriate settings and the facilities shall be comparable to those in which regular education is provided to regular education students.

11.6 Self-Contained Class Placement

A Self-Contained Class Placement is a placement where a student with a disability receives special education and supportive services OUTSIDE THE REGULAR CLASSROOM for more than 60 percent of the school day in a self-contained program. This may include students with disabilities placed in self-contained special classrooms with part-time instruction in a regular class, or self-contained special classrooms full-time. Self-contained classes shall be located in chronologically age appropriate

settings and the facilities shall be comparable to those in which regular education is provided to regular education students.

11.7 Public Separate Day School Placement

A Public Separate Day School Placement is a placement where a student with a disability receives special education and supportive services for greater than 50 percent of the school day in public separate day school facilities. Public separate day school facilities shall be comparable to those in which regular education is provided to regular education students

11.8 Private Separate Day School Placement

A Private Separate Day School Placement is a placement where a student with a disability receives special education and supportive services for greater than 50 percent of the school day in private separate day school facilities. Private separate day school facilities shall be comparable to those in which regular education is provided to regular education students

11.9 Public Residential Placement:

A Public Residential Placement is a placement where a student with a disability resides and receives special education and supportive services for greater than 50 percent of the school day in public residential facilities.

11.10 Private Residential Placement:

A Private Residential Placement is a placement where a student with a disability resides and receives special education and supportive services for greater than 50 percent of the school day in private residential facilities.

11.11 Homebound/Hospital Placement:

A Homebound/Hospital Placement is a placement where a student with a disability receives special education and supportive services at home or in a medical treatment facility. Home instruction is usually appropriate for only a limited number of students, such as students who are medically fragile and are not able to participate in a school setting with other students.

11.12 Placement of Students with Disabilities

Any proposal to change the placement of a student with a disability including any proposal to transfer, discharge, or terminate special education services shall be based on the student's Individualized Education Program and documented as fully as the initial placement.

Parental consent shall not be required as a condition of any placement except for the initial placement in special education of a student with a disability. Notice of the proposed change of placement, as described

below in §11.13, Notification of Proposed Placement, shall be provided at least seven days prior to the proposed placement.

11.13 Notification of Proposed Placement

The parent of each student with a disability for whom an Individualized Education Program is developed shall be sent prior written notice as described and defined in §12.3 prior to the implementation of a change of the student's placement or the transfer for a period in excess of ten school days of a student from one special education placement to another placement.

11.14 Consent for Initial Placement

If the Individualized Education Program proposed for a student represents the student's initial placement in special education, written consent, as defined in §12.4, shall be obtained from a parent of the student before placement occurs.

11.15 Absence of Consent

If it is not possible to obtain parental consent for an initial special education placement, a school may initiate a mediation or due process hearing, as described in Part 13, Dispute Resolution Procedures, to determine if the student may be initially placed without parental consent.

11.16 Residential Treatment Center Placements

The placement of a student with a disability in a residential treatment center shall be based, in part, on an evaluation by a certified school psychological service provider, licensed psychologist or psychiatrist and the documentation that the student's special education needs cannot be met in a less restrictive setting.

11.17 State Approval of Placements

Placement of students with disabilities in a private special purpose school, approved special education program in a general purpose private school (other than one used as the regular school for students for the S.A.U.), regional special education programs, approved educational programs operated in hospital settings, or state-operated program must be approved by the Department of Education, Special Services Team.

One copy of the "Request for Tuition Placement of Students with Disabilities," (Form EF-S-01) must be submitted for review and approval for each student proposed for such placements. No placement will be counted as an allowable special education cost without this prior approval. Prior approval is not required for EF-S-01s submitted for hospital education programs, but must be submitted as soon as possible after the service is instituted.

Copies of the Pupil Evaluation Team minutes, the prior written notice (§12.3), supporting evaluation reports, and the student's Individualized Education Program justifying the proposed placement shall be submitted with each initial "Request for Tuition Placement of Students with Disabilities" (Form EF-S-01). For EF-S-01s submitted for hospital placements, no accompanying information is required for students not previously identified as requiring special education. For those previously identified students, the EF-S-01 must be accompanied by the P.E.T. minutes recommending the service and the revised I.E.P., or a note explaining why no P.E.T. meeting was held.

A school unit shall verify, prior to placement of a student with a disability, that a special purpose private school has been approved by the Department of Education for the student's age, type of disability, and services determined by the Pupil Evaluation Team and included in the student's Individualized Education Program.

Requests for tuition placement approval shall be renewed annually in the manner specified by the Commissioner.

The "Request for Tuition Placement of Students with Disabilities" (EF-S-01) shall be considered for approval only if the above conditions on the part of the sending and receiving schools are met. The Department shall respond within a reasonable period of the receipt of any such request for placement approval.

NOTE: Copies of the form and answers to any questions concerning its use may be obtained from the Special Services Team, Maine Department of Education.

11.18 Out-of-State Placements

Because an out-of-state placement is usually more restrictive than an in-state placement, justification for such requests is particularly critical. Accompanying the EF-S-01 form and other required materials submitted to the Special Services Team, Maine Department of Education for approval, in such cases, should be a written explanation of:

A. Why in-state placement of the student is not possible;

B. What efforts were made to locate an appropriate in-state placement; and

C. The reasons why these in-state placement efforts were not successful or why an in-state placement was not considered appropriate for the student.

12. DUE PROCESS REQUIREMENTS

12.1 General Requirements

Each school administrative unit must implement the procedural safeguards required by this rule and by applicable federal law to protect the rights of students with disabilities.

12.2 Parent and Student Access to Records, Information

Parents of a student with a disability, adult students and an authorized representative of the parent or adult student shall be permitted to have access to and to examine all records with respect to the identification, evaluation, placement or the provision of a free appropriate public education to the student with a disability. The procedures for accessing educational records shall meet with the requirements of Part 15, Education Records.

12.3 Prior Written Notice

A. Notice Required - The parents of a student shall receive written notice at least seven days prior to the date upon which the school unit proposes or refuses to initiate or change the identification, evaluation, educational program, placement or the provision of a free appropriate public education to a student. The notice shall be written in language understandable to the general public.

B. Content of Notice - The notice shall include the following:

1. A description of the action proposed or refused by the school;

2. An explanation of why the school proposes or refuses the action;

3. A description of any other options that the school considered and the reasons those options were rejected;

4. A description of each evaluation procedure, test, record, or report the school used as a basis for the proposed or refused action;

5. A description of any other factors that are relevant to the proposed or refused action;

6. A statement that the parents of a student with a disability have protections under the procedural safeguards of these regulations and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

7. Sources for parents to contact to obtain assistance in understanding the provisions of these regulations.

C. Language of Notice - The notice must be provided in the language commonly used in the home of the parents. If the school has reason to believe the parent is not literate or if the native language is not a written language, the school unit shall take appropriate steps to ensure that:

1. The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

2. The parent understands the content of the notice; and

3. There is documentation that these notice requirements have been met.

12.4 Parental Consent

Written consent is required from the parent of a student or an adult student prior to an initial special education evaluation, an initial placement in a special education program, a reevaluation, accessing private insurance and the release of an education record to non-authorized parties. Consent is intended to assure that the parent or adult student:

A. Has been fully informed of all information relevant to the activity for which consent is sought;

B. Understands and agrees in writing to the implementation of the activity or the releasing of a record to an identified third party; and

C. Understands that the granting of consent is voluntary and may be revoked at any time.

Refusal to grant consent – If the parents of a student with a disability refuse consent for initial evaluation or reevaluation, the school administrative unit may use the mediation or hearing procedures under Part 13, Dispute Resolution Procedures, of these rules to secure parental consent.

Withdrawal of Parental Consent - A withdrawal of parental consent after the initial evaluation or initial placement in special education shall be considered a request to change the student's program and placement. As such the P.E.T. shall convene and consider the parent's request. If the P.E.T. disagrees with the parent's request, the S.A.U. may use the mediation process or initiate a hearing to override the parent's withdrawal of consent.

Failure to respond to request for reevaluation – Informed parental consent need not be obtained if the school administrative unit can demonstrate that it has taken reasonable measure to obtain such consent and the student's parents have failed to respond.

Limitation – A school administrative unit may not require parental consent as a condition for the receipt of special education services except for the initial evaluation, initial placement in special education and reevaluation.

12.5 Evaluation Procedures

A. General requirements - Each school administrative unit shall establish and implement evaluation procedures which meet the requirements of this rule.

B. Pre-placement evaluation - Before any action is taken with respect to the initial placement of a student with a disability in a special education program, a full and individual evaluation of the student's educational needs must be conducted.

C. Independent educational evaluation - If the parent of a student disagrees with the results of an evaluation conducted or obtained by the administrative unit, they have the right to obtain an independent educational evaluation of their child at public expense. However, the school administrative unit may initiate a hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense.

Each public agency shall provide to parents, upon request, information about where an independent evaluation may be obtained. Qualified evaluators who provide contracted services on a regular and on-going basis to an administrative unit may not be considered "independent" for purposes of this section. If the parent submits a written request that the school administrative unit provide an independent educational evaluation, the administrative unit shall provide the parent with a written response within a reasonable period not to exceed 30 days of the receipt of the request and provide the parent with information regarding allowable providers and rates for independent educational evaluation services. Parents are under no obligation to request an independent evaluation from the administrative unit prior to exercising their right to obtain an independent evaluation.

D. Hearing on independent evaluation - If the school unit refuses to grant a parent's request for an independent evaluation or refuses to pay for an independent evaluation obtained by a parent, the unit shall immediately initiate a due process hearing to demonstrate that the evaluation conducted by the unit is appropriate.

An administrative unit may initiate a due process hearing to challenge a parent's right to obtain an independent evaluation at public expense whenever the unit:

1. Believes that the providers of an independent evaluation are not qualified according to these rules;

2. Believes that the amounts charged for the evaluation services are excessive; or

3. Believes that the unit's evaluations are appropriate.

A parent may initiate, at any time, a due process hearing to challenge an administrative unit's evaluation and request that the administrative unit be ordered to provide an independent educational evaluation.

E. Hearing decision: result - If the final decision of such a hearing is that the original evaluation is appropriate, an independent educational evaluation may still be obtained, but not at the expense of the administrative unit. Units shall provide to parents, on request, information about where such an independent educational evaluation may be obtained. If the final decision of such a hearing, or any due process hearing on the student, is that the original evaluation is inappropriate, then an independent educational evaluation shall be conducted at the expense of the administrative unit.

F. Use of independent evaluation - An independent educational evaluation shall be considered by the Pupil Evaluation Team in developing an Individualized Education Program for the student and may be presented as evidence at any due process hearing.

12.6 Surrogate Parents

A. Appointment of surrogate parent - Whenever the natural parents or guardian of a student with a disability cannot be identified or located after reasonable efforts, the superintendent of the responsible administrative unit shall notify the Special Services Team, Maine Department of Education and request the appointment of a surrogate parent. The term "guardian" does not include the State if the student is a state ward.

Whenever a student with a disability is a state ward residing in a foster home licensed by the Department of Human Services, the foster parent shall be recognized as the surrogate parent for the student placed in his/her care and shall meet the criteria at 12.6 C for surrogate parents. There is no need for the Commissioner to appoint the foster parent of a state ward. The administrative unit in which the foster parent resides shall notify the foster parent of the rights and responsibilities of a surrogate parent.

If the school administrative unit or Department of Human Services has reason to believe that a foster parent does not meet the criteria at 12.6 C for appointment as a surrogate parent, the administrative unit or the Department of Human Services shall file with the Department of Education a written objection to the automatic appointment of the foster

parent as surrogate parent and a recommendation for the appointment of another individual as the surrogate parent.

The foster parent has the right to challenge such an objection through a due process hearing.

When a state ward is hospitalized, the foster parent who was serving as surrogate parent shall continue in that position, until such time as the student is discharged to a placement other than that foster home. If the hospitalization is long-term, out-of-state psychiatric care, D.H.S. or the S.A.U. shall request DOE to appoint a surrogate parent, if the previous foster parent had been serving as surrogate parent under the automatic appointment process.

Whenever a student with a disability is a state ward and is NOT residing in a licensed foster home or is experiencing multiple placements within a short period of time, the Department of Human Services or the school administrative unit which has educational responsibility for the student shall request the Department of Education to appoint a surrogate parent.

B. Duties of surrogate parents - The surrogate parent is the only person authorized to represent the student in any matters relating to the student's identification, evaluation, educational programming, placement, or the provision of a free appropriate public education.

The representative from the Maine Department of Human Services for a state ward may have access to records and participate in P.E.T. meetings but may not exercise the procedural safeguards under this rule.

C. Criteria for surrogate parent selection - A surrogate parent shall meet the following criteria:

1. Has no interests that conflict with the interests of the student being represented;

2. Has sufficient knowledge and skill to ensure adequate representation of the student; and

3. Is not an employee of a public agency involved in the education or care of the student.

The term "public agency" includes, but is not limited to, the Department of Education, the Department of Human Services, the Department of Corrections, the Department of Mental Health, Mental Retardation, and Substance Abuse Services, the school administrative unit responsible for providing education to the student, an agency operated foster or group home and the school unit of residence of the student's parents. A person who otherwise qualifies to be a surrogate parent under these rules is not an employee of the agency solely because he or she is paid by the agency to serve as a foster parent.

12.7 Hearing Rights

A due process hearing conducted in accordance with Part 13, Dispute Resolution Procedures shall be provided whenever:

A. A parent disagrees with a school unit's proposal to initiate or change the identification, evaluation or educational placement or the provision of a free appropriate public education to the student;

B. A parent disagrees with a school unit's refusal to initiate or change the identification, evaluation or educational placement of the student or to provide a free appropriate public education; or

C. A parent refuses written consent for the initial special education evaluation or special education placement of a student with a disability.

12.8 Assistance to Parents

Each school unit shall allow the parents of a student to be represented or assisted by an individual or individuals of their choosing. If the parents request information regarding any free or low cost legal aid, parent support groups, or other relevant services, or if a due process hearing has been initiated by either party, the Department shall inform the parents of any such free or low-cost legal aid, parent support groups or other relevant services.

12.9 Dispute Resolution Procedures

Each school unit shall adopt procedures to resolve disagreements or complaints concerning the identification, evaluation and/or educational program or placement of the student through conferences, mediation, or a third party investigation of the complaint. These procedures shall encompass the safeguards listed in this rule and shall not interfere with the parent's right to a due process hearing.

12.11 Communication of Procedural Safeguards

A procedural safeguard statement, in substantially the following form, shall be given by the school administrative unit to the parent and adult student upon initial referral for special education evaluation, upon each notice of a P.E.T. meeting, upon request for parental consent for reevaluation of a student with a disability and upon receipt of a request for a due process hearing.

A. PARENTAL PARTICIPATION

As the parent of a child who has or may have a disability, you are entitled to participate in meetings regarding your child's eligibility determination, initial evaluation or reevaluation, educational placement or provision of a free appropriate public education.

B. PRIOR NOTICE TO PARENTS

Your school district must provide you with a written notice a reasonable time before the school proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to the child.

If the school is also required to have your written permission (consent) for an action, the school may provide this notice to you at the same time it requests your consent.

The notice must include:

A description of the action proposed or refused by the school, an explanation of why the school proposes or refuses to take the action, and a description of any options the school considered and the reasons why those options were rejected;

A description of each evaluation procedure, test, record, or report the school uses as a basis for the proposal or refusal;

A description of any other factors which are relevant to the school's proposal or refusal; and

A statement that you have the rights contained within this notice and where you may obtain a copy of this notice.

Sources you may contact for assistance in understanding your rights include the Special Needs Parents Information Network (1-800-870-7746) and Southern Maine Parent Awareness (1-800-564-9696).

You may file a complaint with the Maine Department of Education if you believe the school has violated a requirement under the Maine Special Education Regulations. (*see* Department of Education Complaints in §H. below)

The notice must be written in language understandable to the general public. The notice must be provided in your native language or other mode of communication, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, your school must take steps to insure that the notice is translated orally or by other means to you in your native language or other mode of communication, that you understand the content of the notice, and that there is written evidence that these requirements have been met.

C. PARENT CONSENT

Your school must obtain your written permission (consent) before conducting an initial evaluation, before an initial placement of your child in a program providing special education and supportive services or before conducting any new test as part of a reevaluation of your child. Except for initial evaluation, reevaluation and initial placement, your permission may

not be required as a condition for providing any special education or supportive services to you or your child.

If you refuse to provide your permission (consent) for an initial evaluation or initial placement of your child in a program providing special education and supportive services, your school may use the due process hearing or mediation procedures to determine whether your child may be evaluated or initially provided special education and supportive services without your consent. If the hearing officer orders the school to evaluate or place your child or if you and the school reach a mediated agreement, the school may evaluate your child or provide special education and supportive services to your child.

Generally, either parent may grant consent. In the case of divorced parents with joint custody either parent may grant consent. However, in the event that one parent grants consent and the other parent refuses, then the school is obligated to initiate the action for which consent has been granted.

D. EVALUATION / REEVALUATION

The Pupil Evaluation Team (P.E.T.), of which you are a member, may decide that no additional information is needed to determine your child's initial or continuing eligibility for special education. If you disagree with the team's decision, you may request that the school conduct an assessment of your child. If your child has a disability and has been receiving special education services, the school district must evaluate your child before determining that your child no longer requires special education services.

E. PARENTAL CONSENT FOR REEVALUATION

The school must obtain your written consent before conducting a reevaluation of your child. However, if the school can show that it tried to get your consent for the reevaluation of your child and you did not respond then the school may reevaluate your child without your consent. Your consent is not required to review existing evaluation information.

F. INDEPENDENT EDUCATIONAL EVALUATION

An independent evaluation is an evaluation conducted by a qualified person who is not an employee of the school. You have the right to an independent educational evaluation at no cost to you if you disagree with an evaluation obtained by your school. However, your school may initiate a due process hearing to show that its evaluation is appropriate. If the hearing decision is that the school's evaluation is appropriate, you still have the right to an independent educational evaluation, but at your expense. If you obtain an independent educational evaluation at your expense, the results of the evaluation must be considered by your school in any decision made with respect to the provision of a free appropriate

public education to your child, and may be presented as evidence at a due process hearing regarding your child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

Your school shall provide you, when you request it, information about where an independent educational evaluation may be obtained.

Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the school uses when it initiates an evaluation. A school may not impose any additional criteria regarding an independent educational evaluation.

G. SUPERINTENDENT COMPLAINTS

You have the right to file a written complaint with the superintendent of the administrative unit responsible for the education of your son or daughter if you have reason to believe that the administrative unit is not in compliance with these special education regulations. The superintendent, or a designee, shall then appoint a person to investigate your complaint and to recommend to the superintendent, within 30 days of the receipt of the written complaint, any corrective action necessary to resolve your complaint.

H. DEPARTMENT OF EDUCATION COMPLAINTS

You have the right to file a signed, written complaint with the Commissioner of the Department of Education if you have reason to believe that the administrative unit responsible for the education of your son or daughter is not in compliance with these special education regulations or if you disagree with the results of a superintendent's complaint investigation.

The Department shall initiate and complete, within 60 days of the receipt of the written complaint, an investigation and a determination of whether your school has complied with these special education regulations.

If your school is determined to be in non-compliance, the Department will develop a corrective action plan to resolve the complaint.

I. MEDIATION

You or the school have the right to request the Department of Education to provide mediation services if you and the school are unable to agree upon the identification, evaluation, educational program, placement or the provision of a free, appropriate public education of your son or daughter.

The mediation must be voluntary on the part of both you and the school district. Mediation may not be used to delay or deny your right to a due

process hearing. The mediation must be conducted by a qualified and impartial mediator at no cost to you or the school district. The mediation will be held in a timely manner and at a location that is convenient to you and the school. Any agreement reached in mediation will be put into writing and becomes a part of your child's I.E.P. If the school fails to implement the mediation agreement you may initiate a hearing or file a complaint against the school. Mediation discussions are confidential and may not be used as evidence in a hearing. You and the school may be required to sign a confidentiality pledge prior to the start of the mediation.

If you chose not to participate in a mediation, the Maine Department of Education may require you to meet with a third party who will explain the benefits of the mediation process to you. If you would like to request a mediation or would like more information about mediation, you may contact the Maine Department of Education, Special Services Team at 287-5950.

J. IMPARTIAL DUE PROCESS HEARING

You or your school may initiate a hearing regarding the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child.

You must send your written request for a due process hearing to the Maine Department of Education. The request must contain the name of the child, the child's residence, the school the child is attending, a description of the problem and facts relating to the problem, and a proposed solution to the problem.

A form is available from the Maine Department of Education, your local school, or the Special Needs Parent Information Network (SPIN). Failure to provide the required information may result in a reduction of the award of any attorney fees if you win your case.

The hearing will be conducted by an impartial hearing officer appointed by the Department and contracted to provide hearing officer services.

The Department must inform you of any free or low-cost legal and other relevant services available in the area if you request the information or if you or your school initiate a due process hearing.

A hearing may not be conducted by a person who is an employee of a public agency which is involved in the education or care of your child, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. (A person who otherwise qualifies to conduct a hearing is not an employee of the Department solely because he or she is paid by the Department of Education to serve as a hearing officer.)

The Department maintains a list of the persons who serve as hearing officers. The list includes a statement of the qualifications of each of those persons.

The Department shall ensure that a final hearing decision is reached and mailed to the parents and the school within 45 days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension at the request of either party.

The decision made in a due process hearing is final, unless you or the school brings a civil action under the procedures described below.

K. DUE PROCESS HEARING RIGHTS

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;

2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

4. Obtain a written or electronic verbatim record of the hearing; and

5. Obtain written findings of fact and decisions. (After deleting any personally identifiable information, the Department shall transmit those findings and decisions to the State advisory panel and make them available to the public.)

As the parent, you have the following additional rights:

You may have your child present at the hearing;

You may open the hearing to the public; and

You may obtain the findings of fact, decision and record of the hearing at no cost to you.

Each hearing must be conducted at a time and place which is reasonably convenient to you and your child.

L. CIVIL ACTION

Any party aggrieved by the findings and decision made in a hearing has the right to appeal the decision in State or Federal Court.

M. CHILD'S STATUS DURING DUE PROCESS PROCEEDINGS

During the pendency of any complaint investigation, mediation, or due process hearing or appeal of a hearing, unless you and your school agree

otherwise, your child must remain in his or her present educational placement and program.

If the hearing involves an application for initial admission to public school, your child, with your consent, must be placed in the public school program until the completion of all the proceedings.

N. AWARD OF ATTORNEYS' FEES

You may request either a state or federal court to award reasonable attorney fees and costs if you win your hearing either through a settlement or a hearing decision.

Attorney fees may not be awarded relating to any meeting of the Pupil Evaluation Team unless the meeting occurs as a result of an order of a hearing officer or a judge. Attorney fees may not be awarded for a mediation.

The award of attorney fees may be reduced if you unreasonably delayed the settlement or decision in the case, the time spent and services furnished were excessive or the fees charged by your attorney exceed reasonable rates.

O. SURROGATE PARENTS

Each school shall ensure that an individual is assigned to act as a surrogate for the parents of a child when no parent can be identified, the school, after reasonable efforts, cannot discover the whereabouts of a parent, or the child is a ward of the State. The Department must have a method for determining whether a child needs a surrogate parent, and for assigning a surrogate parent to the child.

The Department may select a surrogate parent in any way permitted under State law, but must ensure that a person selected as a surrogate is not an employee of an agency which is involved in the education or care of the child, has no interest that conflicts with the interest of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child. (An individual is not disqualified as an agency employee from appointment as a surrogate solely because he or she is paid by the Department to serve as a surrogate parent.)

The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child.

P. TRANSFER OF RIGHTS

In general, when your child reaches age 18 (or has been emancipated), these procedural safeguards will transfer to your child. A court may appoint a legal guardian for your child if your child has been determined,

consistent with state procedures, to be unable to provide informed consent.

At least one year before your child turns 18, the school district will inform your child of the rights, if any, that will be transferred to your child. The school will inform both you and your child when these rights are transferred to your child.

As the parent of an adult child with a disability, both you and your child will continue to receive notice of P.E.T. meetings, prior written notice and the notice of procedural safeguards.

Q. DISCIPLINARY PROCEDURES

If your child has violated the school's disciplinary standards, the school may remove your child from his or her current educational setting for not more than 10 consecutive school days or 10 days cumulatively within a school year, to the extent removal would be applied to students without disabilities.

After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's I.E.P.

The school district may place your child in an interim alternative education setting for up to 45 days if your child possesses or uses illegal drugs or carries a weapon to school or a school function.

If the school district wants to change your child's placement for more than 10 school days, you have the right to participate in the manifestation determination meeting. This meeting determines whether the behavior was or was not related to your child's disability.

If the determination is made that the behavior is related to your child's disability then your child may not be suspended, expelled or removed from his or her current educational placement for more than ten school days (except in the case of weapons or drugs) unless the Pupil Evaluation Team develops a new I.E.P. and decides upon a new placement. If there is no relationship between your child's disability and the behavior, then your child may be disciplined as any other child. During any removal in excess of 10 days, the school district shall provide your child with special education and supportive services to the extent necessary to enable your child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in your child's I.E.P.

If you disagree with the manifestation determination, the decision to place your child in an interim alternative education setting or any other

disciplinary placement, you have the right to request a hearing or an expedited due process hearing.

R. CHILD'S PLACEMENT DURING THE PENDENCY OF DUE PROCESS PROCEDURES -- DISCIPLINARY ACTION

Generally, if you initiate a due process hearing, your child will remain in his or her current educational placement until a final decision has been reached or you and the school agree upon another placement. However, in cases where your child has been placed in an interim alternative education setting because of a disciplinary action, your child may remain in the interim alternative education setting for a period not to exceed 10 days (or 45 days if a weapon or drug related offence). Thereafter, your child will return to the previously agreed upon educational placement unless either a hearing officer orders another placement or you and the school agree to another placement.

S. PRIVATE SCHOOL PLACEMENTS BY PARENTS

The school district may be required to reimburse the costs of a private school placement if you can prove at a due process hearing that the school district has failed or is unable to provide your child with a free appropriate public education and that the private placement is appropriate.

If you plan to place your child with a disability in a private school and seek reimbursement from the school district, you must inform the school district at a Pupil Evaluation Team meeting or provide the school district with written notice at least 10 business days (excluding weekends) prior to the enrollment of your child in the private school. You must inform the school about your disagreement with the school's I.E.P., the placement proposed by the school, your intention to enroll your child in a private school and your intention to request reimbursement.

If the school has provided you with a written notice that the school intends to evaluate your child before you remove your child from the public school, you must make your child available to the school for evaluation.

A court or hearing officer could decide to reduce or deny reimbursement for your private school placement if you fail to inform the school of your intention to make a private school placement at public expense, fail to make your child available for evaluation, or take other unreasonable actions.

T. ACCESS TO RECORDS

Your school must permit you to inspect and review all education records relating to your child with respect to the identification, evaluation, and educational placement of your child, and the provision of a free appropriate public education to your child, which are collected,

maintained, or used by the school. The school must comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, placement or provision of appropriate services to your child, and in no case more than 45 days after the request has been made.

Your right to inspect and review education records under this section includes:

A. The right to a response from the participating school to reasonable requests for explanations and interpretations of the records;

B. Your right to have your representative inspect and review the records; and

C. Your right to request that the school provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The school may presume that you have authority to inspect and review records relating to your child unless the school has been advised that you do not have the authority under applicable Maine law governing such matters as guardianship, separation, and divorce.

The school must keep a record of who (other than authorized employees of the school and the parent) has had access to your child's records, including the person's name, date, and purpose for the access.

If any education record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

The school must provide you on request a list of the types and locations of education records collected, maintained, or used by the school.

U. FEES FOR SEARCHING, RETRIEVING, AND COPYING RECORDS

The school may not charge a fee to search for or to retrieve information under this section, but may charge you a fee for copies of records which are made for you under this rule if the fee does not effectively prevent you from exercising your right to inspect and review those records.

V. RECORD OF ACCESS

The school must keep a record of parties obtaining access to education records collected, maintained, or used under these rules (except access by parents and authorized employees of the participating school), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

W. AMENDMENT OF RECORDS AT PARENT'S REQUEST

If you believe that information in education records collected, maintained, or used under these rules is inaccurate or misleading or violates the privacy or other rights of your child, you may request the school that maintains the information to amend the information.

The school must decide whether to amend the information in accordance with your request within a reasonable period of time of receipt of the request. If the school decides to refuse to amend the information in accordance with the request, it must inform you of the refusal and of your right to a hearing as set forth below.

The school shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must amend the information accordingly and so inform you in writing.

If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of the right to place in the records it maintains on your child a statement commenting on the information or setting forth any reasons you disagree with the decision of the school. Any explanation placed in your child's records under this section must be maintained by the school as part of the records of your child as long as the record or contested portion is maintained by the school; if the records of your child or the contested portion is disclosed by the school to any party, the explanation must also be disclosed to the party.

X. DEFINITIONS

"Consent" means that: (a) You have been fully informed of all information relevant to the activity for which consent is sought, in your native language or other mode of communication; (b) You understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and you understand that the granting of consent is voluntary on your part and may be revoked at any time.

"Evaluation" means procedures used in accordance with these rules to determine whether a child has a disability and the nature and extent of the special education and supportive services that the child needs. The term means procedures used selectively with an individual child and does not

include basic tests administered to or procedures used with all students in a school, grade, or class.

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school responsible for the education of the child in question. "Independent educational evaluation at public expense" means that the school either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to you.

12.12 Student's Status during Pendency of Appeals

A. Present placement requirement - During the pendency of any due process proceeding including mediations, complaints, hearings or any judicial proceeding regarding the identification, evaluation, programming or placement of a student with a disability, unless the public agency and the parents agree otherwise or the student has been placed in an interim alternative education setting consistent with Part 14, Discipline of Students with Disabilities, the student involved in the proceeding shall remain in his or her current educational placement, unless a court of competent jurisdiction has granted an injunction to remove the student from such a placement.

B. Initial admission - If the proceeding involves an application for initial admission to public school, the student, with the consent of the parents, shall be placed in the regular public school program until the completion of all the proceedings.

C. Stay Put Pending Appeal of Hearing Decision - A decision by a due process hearing officer which is favorable to the parents shall constitute an agreement between the parents and the public agency. Pending any judicial proceeding appealing that decision, the student's educational placement shall be changed to conform to that decision.

13. DISPUTE RESOLUTION PROCEDURES: (Mediations, Complaints And Hearings)

13.1 Right to Dispute Resolution, Generally

Any interested party may submit a written complaint to the superintendent of the school administrative unit or the Department alleging that a unit has failed to comply with these rules or when there is a disagreement regarding the identification, evaluation, placement or the provision of a free appropriate public education to a student (*see* §13.5).

A parent or school unit may submit a request for mediation to resolve a dispute regarding a unit's compliance with these rules or the provision of a free appropriate public education in the least restrictive educational

alternative to a student with a disability. Such requests shall be in writing and submitted to the Department of Education (*see* §13.4).

A parent or school unit may submit a written request for a due process hearing to the Department when there is a disagreement regarding the identification, evaluation, placement or the provision of a free appropriate public education to a student (*see* §13.6 - 13.16).

13.2 Request for Dispute Resolution (Hearing, Complaint or Mediation)

A. Request by Parent - A parent, a surrogate parent, an adult student, the designated representative of the parent, surrogate parent or adult student (hereafter referred to as the "parent"), who requests a due process hearing, complaint or mediation shall notify, in writing, the Due Process Coordinator in the Department of Education of the request for a hearing, complaint or mediation and provide a copy of the request to the superintendent.

B. The request shall:

1. Include the name of the student involved, the parent's name, address and telephone number, the school administrative unit which the student attends, a brief summary of the disagreement and any facts relating to the disagreement;

2. Include a summary of how the school was informed of the disagreement, any actions taken by the school to resolve the problem and how the problem could be resolved.

3. Be in writing. An oral request shall be reduced to writing by the superintendent or a designee of the school unit and signed by the parents.

C. Request by school unit - If the school unit seeks a due process hearing or mediation, the superintendent shall notify the parent prior to forwarding the request to the Due Process Coordinator. The notice to the parent and the request to the Due Process Coordinator shall:

1. Include the name of the student involved, the parent's name, address and telephone number, the school administrative unit which the student attends, a brief summary of the disagreement and any facts relating to the disagreement;

2. Include a summary of how the parent was informed of the disagreement, any actions taken by the school to resolve the problem and how the problem could be resolved; and

3. Be in writing.

D. Duties of the Department - Upon receipt of the request for a due process hearing, complaint, or mediation, the Due Process Coordinator shall provide the parents with information pertaining to the availability of

free or low-cost legal aid and other related services, as specified in §12.8, Assistance to Parents.

13.3 Mediation, Alternative Dispute Resolution

If either a parent or a school seeks a due process hearing, the superintendent shall encourage the parents to resolve the disagreement through mediation or other third-party assistance. Such attempts shall not interfere with the parent's right to a due process hearing nor with the 30-day time limit in which a due process hearing must be held.

13.4 Mediation Procedures

Mediation shall be voluntary on the part of the parties. Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under these rules.

Mediation shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and knowledgeable in laws and regulations relating to the provision of special education and supportive services. A list of mediators and their qualifications is available from the Department.

The cost of the mediation process shall be assumed by the Department. The parties to a mediation are responsible for their personnel costs and travel expenses.

Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement which will be incorporated by reference into the student's I.E.P. and will be binding on all parties to the agreement.

Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

An individual who serves as a mediator under these rules may not be an employee of any school administrative unit or the Department of Education and may not have a personal or professional conflict of interest.

Parents or schools who choose not to use the mediation process to resolve a disagreement are encouraged to contact the Due Process Office at the Department of Education or the Special Needs Parent Information Network (SPIN) in order to have the procedures and benefits of the mediation process explained.

Parents may be accompanied to the mediation by an advocate or other person knowledgeable in providing special education services. School personnel with authorization to commit resources and personnel involved with the dispute shall attend any mediation. School administrative units may be represented by counsel in a mediation only when the parents are represented by counsel. An attorney representing a parent shall provide the superintendent of the school administrative unit and the Due Process Office of the Maine Department of Education with at least 7 days written notice prior to the mediation that they will be representing the parent at the mediation. Parties may consult with their attorneys prior to and after engaging in mediation.

13.5 Complaint Procedures

An organization or individual may file a written complaint with the Commissioner alleging that a school administrative unit, other responsible public agency, contracted provider or private school, has failed to comply with State or Federal law regarding the identification, evaluation, placement or the provision of a free appropriate public education to a student with a disability. A form is available from the Department, various parent support groups and the school administrative unit for submitting written complaints.

Filing a Complaint

The complaint must meet the requirements of §13.2, Request for Dispute Resolution and include a statement that a public agency has violated a requirement of these rules, the facts on which the statement is based, and efforts to resolve the dispute with the school.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. A complaint seeking compensatory services may be filed for violations that occurred not more than three years prior to the date of receipt of the complaint.

The Department shall appoint a complaint investigator in a timely manner to ensure that all complaints are investigated and resolved within 60 calendar days of the receipt of the complaint.

The complaint investigator shall:

Carry out an independent on-site investigation, if the investigator determines that such an investigation is necessary;

Provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

Review all relevant information and make a preliminary independent determination as to whether the public agency is violating a requirement of these regulations;

Convene a complaint resolution meeting, if necessary, to discuss preliminary findings and develop a proposed resolution to the complaint; and

Transmit a written decision to the Department that addresses each allegation in the complaint.

Complaint Investigation Reports

The Department shall review the written decision of the complaint investigator and issue a final and binding decision to the complainant and the respondent.

Each complaint investigation report issued by the Department shall include:

Findings of fact and conclusions and the reasons for the Department's final decision.

An explanation of any exceptional circumstances which justify an extension of the 60 day time limit under this section.

Procedures for effective implementation of the Department's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

Other Complaint Procedures

If a written complaint is received that is also the subject of a due process hearing, the Department will set aside any part of the complaint that is being addressed in the due process hearing. If a complaint is received that had previously been decided in a due process hearing involving the same parties, then the hearing decision is binding and the Department will inform the complainant to that effect.

A parent or interested party may file a complaint alleging that a school administrative unit has failed to implement a hearing decision or mediation agreement.

A parent, interested party or School administrative unit may consult with counsel regarding a complaint. Only when the parents are represented by counsel in a complaint resolution meeting may the school administrative unit be represented by counsel. An attorney representing a parent shall provide the superintendent of the school administrative unit and the Due Process Office of the Maine Department of Education with at least 7 days written notice prior to any complaint resolution meeting that they will be representing the parent at the complaint resolution meeting.

13.6 Appointment of Hearing Officer

The Commissioner shall appoint the impartial hearing officer in a timely manner upon receiving a hearing request.

A. Impartiality - The hearing officer shall not be an employee of a public agency involved in the education or care of the student nor of any private school which provides education or care to the student. The term "public agency" includes the Department, the school administrative unit responsible for the education of the student, and the municipality of residence of the student's parents.

A hearing may not be conducted by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

A person who otherwise qualifies to conduct a hearing is not an employee of the Department solely because he or she is paid by the Department to serve as a hearing officer.

The Special Services Team, Maine Department of Education shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of these persons.

The hearing officer shall not communicate directly or indirectly in connection with any issue of fact, law or procedure, with any party or other persons legally interested in the outcome of the proceeding, except upon notice and opportunity for all parties to participate.

This section shall not prohibit the hearing officer from speaking with counsel or from having the advice of agency staff or consultants retained by the Department who have not participated and will not participate in the proceeding.

B. Challenge - The appointment of the hearing officer may only be challenged on the grounds of conflict of interest or bias. Upon the filing in good faith by a party of a timely charge of conflict of interest or bias, requesting that the hearing officer disqualify himself/herself, the hearing officer shall determine the matter as part of the record.

C. Notice - Notice of the appointment and a copy of these rules pertaining to Due Process Requirements (Part 12) and Dispute Resolution Procedures (Part 13) shall be sent to the parties.

13.7 Notice of Hearing Time, Place

The hearing officer shall establish the time and place of the hearing, which, so far as possible, must be convenient to the parties involved, and shall notify both parties.

All hearings shall be scheduled so that the prehearing and hearing shall occur within 30 days of the receipt of the request for a hearing. The hearing officer may grant for just cause an extension of up to 10 days upon written request of either party. Any such extensions shall not

postpone the hearing decision in excess of 60 days from the receipt of the request for a hearing, except by mutual agreement of all parties.

13.8 Settlement Offer

The school may provide the parents with a written settlement offer prior to the date of the hearing. If the parents accept the settlement offer, they shall notify the administrative unit, the hearing officer, and the Commissioner no later than the date of the prehearing conference. Under no circumstances shall either party inform the hearing officer about the settlement offer or introduce as evidence a settlement offer that has not been accepted, in whole or in part, by the parents.

The Commissioner, or a designee, may advise and engage in settlement discussions or further mediation efforts, although these may not postpone the scheduled due process hearing.

The parties may at any time prior to, during, or after the due process hearing engage in settlement discussions.

13.9 Pre-hearing Conference

The hearing officer shall convene a pre-hearing conference to consider the simplification or clarification of issues, the limitation of the number of witnesses, the possibility of agreement disposing of all or any of the issues in dispute, and such other matters as may aid in the disposition of the adjudicatory proceeding.

13.10 Hearing Participants

The hearing shall be closed to the public unless otherwise requested by the parents. Participants at the hearing may include:

A. The parents and their representatives;

B. The student, at the option of the parents;

C. The superintendent of the school unit, or a designee, the special education director and the unit's representative;

D. Witnesses called by the parties;

E. Witnesses called by the hearing officer; and

F. The custodian of the student, (as defined in 22 M.R.S.A. §4002(5) where the student is a state ward.

13.11 Subpoenas

A. Issuance of subpoenas - The Commissioner may issue subpoenas in the name of the Department to require the attendance and testimony of any witness and the production of any evidence relating to any issue or fact in the due process hearing upon the request of either party to the hearing.

B. Fees, expenses - Any fees for attendance and travel required by the witnesses shall be the responsibility of the party seeking the subpoena.

Issuance of subpoenas shall conform in all other respects to the requirement of the Maine Administrative Procedure Act, 5 M.R.S.A. §9060.

C. Petition for modification of subpoena - Any witness subpoenaed may petition the Commissioner to vacate or modify the subpoena issued. The Commissioner shall give prompt notice to the party who requested issuance of the subpoena. After such investigation as the Commissioner deems appropriate, the petition may be granted in whole or in part upon a finding that the testimony or the evidence requested does not relate with reasonable directness to any matter in question, or that the subpoena for attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when evidence is requested.

13.12 Hearing Procedures

The due process hearing shall be conducted according to the procedures established in this section.

A. Opening statement - The hearing officer shall open the hearing by describing the procedures to be followed during the hearing, the facts and issues to be determined in the hearing, any stipulations or agreements between the parties, and a statement of the right to appeal the decision.

B. Testimony - Witnesses called by either party shall testify one at a time. They shall be permitted to listen to one another's testimony only with the consent of both parties and at the discretion of the hearing officer.

C. Recording - A written or electronic verbatim recording of all testimony and other evidence presented at the hearing shall be made and shall become part of the record of the hearing.

D. Evidence admitted - The hearing officer shall not be bound by the rules of evidence applicable to the courts, but shall be bound by the rules of privilege recognized by law. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The hearing officer may exclude irrelevant or unduly repetitious evidence and shall exclude evidence not disclosed to the other party at least five business days prior to the due process hearing.

E. Persons presenting testimony or exhibits shall be sworn or affirmed.

F. Official notice - The hearing officer may take official notice of any facts on which judicial notice could be taken and in addition may take official notice of statutes, regulations and similar non-confidential Department or school documents. Parties shall be notified of the material so noticed and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed.

G. Facts officially noticed shall be included and indicated as such in the record.

H. Cross-examination - Both parties and the hearing officer have the right to examine and cross-examine witnesses.

I. Order of presentation - The order of presentation of testimony and exhibits shall be as follows unless otherwise agreed by the parties or determined appropriate by the hearing officer.

1. Opening remarks by the hearing officer;

2. Opening statement by the party requesting the hearing;

3. Opening statement by the other party;

4. Presentation of evidence by the party (superintendent or parents) requesting the hearing and any witnesses for that party;

5. Presentation of evidence by the other party and any witnesses for that party;

6. Rebuttal witnesses for the party requesting the hearing;

7. Rebuttal witnesses for the other party;

8. Summation by the party requesting the hearing; and

9. Summation by the other party.

J. Concluding remarks by the hearing officer - Prior to adjournment, the hearing officer shall advise all parties that the findings of fact and the hearing officer's written decision shall be made within 15 days of the conclusion of the hearing.

K. Conclusion of hearing; reopening of record - Upon conclusion of the hearing, no other evidence or testimony shall be permitted unless the record is held open by the hearing officer for the receipt of additional material specifically designated. The hearing officer may reopen the record for further proceedings at any time prior to the issuance of the final decision upon provision of appropriate notice to the parties.

13.13 Expedited Due Process Hearings.

Expedited due process hearings shall:

A. Meet the hearing procedures specified in §13.12 except that the hearing officer may elect to limit the hearing to a single day for presentation of evidence, direct and cross-examination of witnesses, and rebuttal.

B. Result in a hearing within 20 business days of the request for the hearing, unless the parents and school officials otherwise agree;

C. Result in a decision being mailed to the parties no later than 45 days after the receipt of the request without exceptions or extensions.

D. The appointment of the hearing officer shall meet the requirements of §13.6, Appointment of Hearing Officer, except that the time periods identified in §13.12, Hearing Procedures for disclosure of evidence shall, for purposes of expedited due process hearings, be not less than five business days; and

E. Be conducted by a due process hearing officer who satisfies the requirements of §13.6, Appointment of Hearing Officer.

The decision of an expedited due process hearing is appealable to state or federal court.

13.14 Final Decision Notice

Every decision made at the conclusion of a proceeding subject to this rule shall be in writing and shall include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision.

A. Findings of fact; final decision - The hearing officer shall issue the findings of fact and the final decision to all parties within 15 days after the conclusion of the hearing.

B. Transmittal of record of hearing - The hearing officer shall forward the complete record of the hearing, the finding of facts, and the final decision to the Due Process Coordinator within 15 days after the conclusion of the hearing. The Department will transmit the findings of fact and decision, after deleting personally identifiable information, to the Maine Advisory Panel on the Education of Children with Disabilities.

C. Appeal - Any party to the hearing may appeal the decision of the hearing officer to the Maine Superior Court or the Federal District Court. Maine law requires that such appeals be brought in Maine Superior Court within 30 days of the receipt of the decision of the hearing officer. The Federal Court may elect to apply this 30 day statute of limitation to appeals brought in Federal Court as well. An appeal may be filed in Maine Superior Court for the county in which the student resides or the county in which the administrative unit is located.

D. Compliance - The administrative unit shall submit to the Commissioner, within 45 days of the date the unit receives the final decision, documentation that the unit has complied with the decision or that an appeal is pending.

E. Enforcement - If the administrative unit refuses to comply with a hearing decision and neither party appeals the decision, the Commissioner shall initiate enforcement action (*see* §16.6, Approval, Enforcement and 20-A M.R.S.A. §§6801-A & 7206).

13.15 Hearing Record

In proceedings subject to this rule the hearing officer shall make a record consisting of:

A. All papers filed and evidence received or considered;

B. A statement of facts officially noticed;

C. Offers of proof, objections and rulings thereon;

D. Findings of fact; and

E. The final decision.

The Commissioner shall retain the entire record of the hearing. Any party to the hearing has a right to obtain a written or electronic verbatim record of the hearing.

Parents are entitled to a written record or, at their option, an electronic verbatim record of the hearing at no cost to the parents. The Department of Education shall provide a record of the hearing to the parents including a transcript upon receipt of notice of an appeal of the decision by the parents.

13.16 Hearing Expenditures/Attorney Fees

A. School unit expenses - Personnel expenses incurred by an administrative unit in the conduct of a hearing shall be considered allowable special education costs. All expenditures (such as fees, honoraria, and per diem expenses) by an administrative unit to personnel involved in a hearing shall be supported by contractual agreements between these personnel and the administrative unit. Attorneys fees and expenses for qualified special education or related services providers may be claimed as special education costs.

B. Private expenses of hearing - Reasonable attorney fees incurred by a parent related to a special education hearing shall be the responsibility of the administrative unit when the parent prevails in the special education hearing and when ordered by a court of appropriate jurisdiction, or when an out-of-court settlement has been agreed to by

both parties. Attorney fees shall be considered an allowable special education expenses.

C. Public expenses of hearing - Impartial hearing officer expenses for due process hearings will be paid directly by the Department.

14. DISCIPLINE OF STUDENTS WITH DISABILITIES

14.1 Change Of Placement For Disciplinary Removals.

For purposes of removal of a student with a disability from the student's current educational placement under §§ 14.2 – 14.11, a change of placement occurs if the removal is for more than 10 consecutive school days; or the student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

14.2 Authority Of School Personnel.

A. School personnel may order:

1(a). to the extent removal would be applied to students without disabilities, the removal of a student with a disability from the student's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §14.1, Change Of Placement For Disciplinary Removals);

(b). After a student with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under §14.3, F.A.P.E. for Students Suspended or Expelled from School; and

2. A change in placement of a student with a disability to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 days, if:

(a). the student carries a weapon to or possesses a weapon at school or a school function under the jurisdiction of a State or school administrative unit; or

(b). the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a

school function under the jurisdiction of a State or school administrative unit.

B 1. Either before or not later than 10 business days after either first removing the student for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under §14.1, Change Of Placement For Disciplinary Removals, including the action described in paragraph (A)(2) of this section—

(a). If the S.A.U. did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the removal described in paragraph (A) of this section, the agency shall convene an I.E.P. meeting to develop an assessment plan.

(b). If the student already has a behavioral intervention plan, the Pupil Evaluation Team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.

2. As soon as practicable after developing the plan described in paragraph (B)(1)(a) of this section, and completing the assessments required by the plan, the S.A.U. shall convene an I.E.P. meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

C 1. If subsequently, a student with a disability who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement under §14.1, the Pupil Evaluation Team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

2. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

D. For purposes of this section, the following definitions apply:

1. Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in §202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

2. Illegal drug—

(a). Means a controlled substance; but

(b). Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that

is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

3. Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of Section 930 of Title 18, United States Code and 17-A M.R.S.A. §1(9).

14.3 F.A.P.E. For Students Suspended Or Expelled From School.

A. A public agency need not provide services during periods of removal under §14.2(A)(1) to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.

B. In the case of a student with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the public agency, for the remainder of the removals, must:

1. Provide services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's I.E.P., if the removal is:

(a). Under the school personnel's authority to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under §§14.1 and 14.2; or

(b). For behavior that is not a manifestation of the student's disability, consistent with §14.7; and

2. Provide services consistent with §14.5, regarding the determination of the appropriate interim alternative educational setting, if the removal is—

(a). For drug or weapons offenses under §14.2(A)(2); or

(b). Based on a hearing officer determination that maintaining the current placement of the student is substantially likely to result in injury to the student or to others if he or she remains in the current placement, consistent with §14.4.

C. School personnel, in consultation with the student's special education teacher, determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's I.E.P. if the student is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under §14.1.

The student's Pupil Evaluation Team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's I.E.P. if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability, consistent with §14.7.

14.4 Authority Of Hearing Officer.

A hearing officer may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing—

A. Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;

B. Considers the appropriateness of the student's current placement;

C. Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

D. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher, meets the requirements of §14.5.

E. As used in this section, the term substantial evidence means beyond a preponderance of the evidence.

14.5 Determination Of Setting.

A. General. The interim alternative educational setting referred to in §14.2(A)(2) must be determined by the Pupil Evaluation Team.

B. Additional requirements. Any interim alternative educational setting in which a student is placed under §§14.2(A)(2) or 14.4 must:

1. Be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current I.E.P., that will enable the student to meet the goals set out in that I.E.P.; and

2. Include services and modifications to address the behavior described in §§14.2(A)(2) or 14.4, that are designed to prevent the behavior from recurring.

14.6 Manifestation Determination Review.

A. General. If an action is contemplated regarding behavior described in §§14.2(A)(2) or 14.4, or involving a removal that constitutes a change of

placement under §14.1 for a student with a disability who has engaged in other behavior that violated any rule or code of conduct of the S.A.U. that applies to all students—

1. Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in §12.11; and

2. Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action.

B. Individuals to carry out review. A review described in paragraph (A) of this section must be conducted by the P.E.T. and other qualified personnel in a meeting.

C. Conduct of review. In carrying out a review described in paragraph (A) of this section, the Pupil Evaluation Team and other qualified personnel may determine that the behavior of the student was not a manifestation of the student's disability only if the Pupil Evaluation Team and other qualified personnel:

1. First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:

(a) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the student;

(b) Observations of the student; and

(c) The student's I.E.P. and placement; and

2. Then determine that—

(a) In relationship to the behavior subject to disciplinary action, the student's I.E.P. and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's I.E.P. and placement;

(b) The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and

(c) The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.

D. Decision. If the Pupil Evaluation Team and other qualified personnel determine that any of the standards in paragraph (C)(2) of this section were not met, the behavior must be considered a manifestation of the student's disability.

E. Meeting. The review described in paragraph (A) of this section may be conducted at the same P.E.T. meeting that is convened under §14.2(B).

F. Deficiencies in I.E.P. or placement. If, in the review in paragraphs (B) and (C) of this section, a public agency identifies deficiencies in the student's I.E.P. or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

14.7 Determination That Behavior Was Not Manifestation Of Disability.

A. General. If the result of the review described in §14.6 is a determination, consistent with §14.6(D), that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities, except as provided in §14.3.

B. Additional requirement. If the public agency initiates disciplinary procedures applicable to all students, the agency shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

C. Student's status during due process proceedings. Except as provided in §14.9, §12.12, Student's Status During Pendency of Appeals applies if a parent requests a hearing to challenge a determination made through the review described in §14.6 that the behavior of the student was not a manifestation of the student's disability.

14.8 Parent Appeal.

A. General. (1) If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under §§14.2 – 14.11, the parent may request a hearing.

(2) The State or school administrative unit shall arrange for an expedited hearing in any case described in paragraph (A)(1) of this section if a hearing is requested by a parent.

B. Review of decision. (1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of §14.6(D).

(2) In reviewing a decision under §14.2(A)(2) to place the student in an interim alternative educational setting, the hearing officer shall apply the standards in §14.4.

14.9 Placement During Appeals.

A. General. If a parent requests a hearing or an appeal regarding a disciplinary action described in §§14.2(A)(2) or 14.4 to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in §§14.2(A)(2) or 14.4, whichever occurs first, unless the parent and the State agency or school administrative unit agree otherwise.

B. Current placement. If a student is placed in an interim alternative educational setting pursuant to §§14.2(A)(2) or 14.4 and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the student must remain in the current placement (the student's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.

C. Expedited hearing.

1. If school personnel maintain that it is dangerous for the student to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the S.A.U. may request an expedited due process hearing.

2. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in §14.4.

3. A placement ordered pursuant to paragraph (C)(2) of this section may not be longer than 45 days.

4. The procedure in paragraph (C) of this section may be repeated, as necessary.

14.10 Protections For Students Not Yet Eligible For Special Education And Related Services.

A. General. A student who has not been determined to be eligible for special education and related services under these rules and who has engaged in behavior that violated any rule or code of conduct of the school administrative unit, including any behavior described in §§14.2 or 14.4, may assert any of the protections provided for in these rules if the S.A.U. had knowledge (as determined in accordance with Paragraph B, Basis of Knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

B. Basis of knowledge. An S.A.U. must be deemed to have knowledge that a student is a student with a disability if—

1. The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the student is in need of special education and related services;

2. The behavior or performance of the student demonstrates the need for these services, in accordance with Part 3, Students With Disabilities of these rules;

3. The parent of the student has requested an evaluation of the student pursuant to Part 9, Evaluation and Identification of Students with Disabilities of these rules; or

4. The teacher of the student, or other personnel of the school administrative unit, has expressed concern about the behavior or performance of the student to the director of special education of the agency or to other personnel in accordance with the agency's established student find or special education referral system.

C. Exception. A school administrative unit would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency—

1. Either—

(a) Conducted an evaluation under Part 9, Evaluation and Identification of Students with Disabilities of these rules, and determined that the student was not a student with a disability under these rules; or

(b) Determined that an evaluation was not necessary; and

2. Provided notice to the student's parents of its determination under paragraph (C)(1) of this section, consistent with §12.3, Prior Written Notice.

D. Conditions that apply if no basis of knowledge. (1) General. If an S.A.U. does not have knowledge that a student is a student with a disability (in accordance with paragraphs (B) and (C) of this section) prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with paragraph (D)(2) of this section.

2. Limitations.

(a) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary

measures under §§14.2 or 14.4, the evaluation must be conducted in an expedited manner.

(b) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(c) If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of these rules, including the requirements of §§14.2 – 14.9.

14.11 Expedited Due Process Hearings.

A. Expedited due process hearings under §§14.4 – 14.9 must—

1. Meet the requirements of §13.12, Hearing Procedures; and

2. Be conducted by a due process hearing officer who satisfies the requirements of §13.6, Appointment of Hearing Officer.

B (1). Expedited hearings shall result in a written decision being mailed to the parties within 45 days of the Department's receipt of the request for the hearing, without exceptions or extensions.

2. The timeline established under paragraph (B)(1) of this section must be the same for expedited hearings requested by parents or public agencies.

C. The decisions on expedited due process hearings are appealable consistent with §13.14, Final Decision Notice.

14.12 Referral To And Action By Law Enforcement And Judicial Authorities.

A. Nothing in these rules prohibits an S.A.U. from reporting a crime committed by a student with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.

B (1) An S.A.U. reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime.

2. An S.A.U. reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

15. EDUCATION RECORDS

15.1 General Principles: Confidentiality Requirements

Each school administrative unit shall adopt and implement procedures to protect the confidentiality of student records, in accordance with the federal Family Educational Rights and Privacy Act of 1974 and the Individuals with Disabilities Education Act.

NOTE: Copies of the Family Educational Rights and Privacy Act and the Individuals with Disabilities Education Act are available from the Special Services Team, Maine Department of Education.

15.2 Definitions

The following terms shall have the definitions set forth here for purposes of these rules:

Destruction - Physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Parent - Includes any of the following, unless otherwise specified: natural or adoptive parent, legal guardian, non-custodial parent, or surrogate parent.

Education records - Those records which are maintained by a school unit or agency which are directly related to a student and any information pertaining to an identifiable student. The type of records covered under this term are further defined in the regulations implementing the Family Educational Rights and Privacy Act of 1974.

School - The term "school" means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under these rules.

15.3 Access Rights

Each school shall permit parents, adult students, or their authorized representative to inspect and review any education records relating to their student which are collected, maintained, or used by the school under these regulations. The school shall comply with a request for access without unnecessary delay and before any meeting regarding an Individualized Education Program or any due process hearing relating to the identification, evaluation, or placement of the student, and in no case more than 45 days after the request has been made.

The right to inspect and review education records under this section includes:

A. The right to a timely response from the school to reasonable requests for explanations and interpretations of the records;

B. The right to copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records;

C. The right to have a representative of the parent inspect and review the records; and

D. The right to a list of the types and locations of education records collected, maintained, or used by the school.

15.4 Consent

Consent of the parent shall be obtained in writing before personally identifiable information is disclosed to anyone other than designated officials or employees of the school, except as noted below.

The written consent required by this section shall be signed and dated by the parent giving consent and shall include:

A. A specification of the records which may be disclosed;

B. The purpose(s) of the disclosures; and

C. The party or parties to whom the disclosures may be made.

A school shall disclose education records without parental consent upon request from another school or school system in which the student is enrolled or intends to enroll in accordance with the Family Educational Rights and Privacy Act. An administrative unit shall disclose personally identifiable information and education records to authorized staff of the Department of Education and federal Department of Education upon request.

In the event that a parent refuses to provide consent for the release of information necessary to determine the need or to provide a free appropriate public education to a student in need of special education and supportive services, the responsible agency may seek to overrule the parent's objections through the use of the due process hearing system.

15.5 Record of Access

Each school shall keep a record of parties who have obtained access to education records (except for access by parents and authorized employees of the school). The record shall include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records and shall be maintained with the education records.

15.6 Records on More Than One Student

If any education record includes information on more than one student, the parents of a student shall have the right to inspect and review only the

information relating to their student or to be informed of that specific information.

15.7 Fees

A school may, based on local policy, charge a reasonable fee for copies of records provided to parents under this rule. The fee shall not prevent the parents from effectively exercising their right to inspect and review those records.

A school may not charge a fee to search for or to retrieve information under these regulations.

15.8 Amendment of Records at Parental Request

A. Request to amend records - A parent may request a school to amend education records that the parent believes to be inaccurate, misleading or in violation of the privacy or other rights of a student.

The school shall, within 15 days of receipt of the request, either amend the information in accordance with the parent's request or inform the parents of its refusal to amend the information and advise the parent of the opportunity for a hearing.

B. Opportunity for a hearing - The school shall, on request, provide a hearing in which the parent may challenge information in education records.

The hearing shall be conducted according to the procedures specified in the regulations implementing the Family Educational Rights and Privacy Act of 1974.

C. Result of hearing - If the hearing officer decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school shall amend the information accordingly and so inform the parent in writing.

If the hearing officer decides that the information is NOT inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the hearing officer shall inform the parent of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school in the student's education records.

D. Any explanation placed in the education record of the student under this section shall:

1. Be maintained by the school as part of the records of the student as long as the record or contested portion is maintained by the school; and

2. Be disclosed to any party to whom the education record is disclosed.

15.9 Safeguards

Each school shall protect the confidentiality of education records at collection, storage, disclosure, and destruction stages.

The superintendent of each school unit and each school director shall appoint an individual to be responsible for ensuring the confidentiality of education records and training other staff.

All persons collecting or using personally identifiable information shall receive training or instruction regarding the federal law, state and local policies and procedures for ensuring confidentiality.

Each school shall maintain, for public inspection, a current listing of the names and positions of those employees within the school who may have access to education records.

15.10 Destruction of Information

The School Administrative Unit shall inform parents when the S.A.U. has determined that education records are no longer needed to provide educational services to the student or to demonstrate that the S.A.U. has provided the student with a free appropriate public education as required by these rules. Such records must be destroyed at the request of the parents or may be turned over to parents upon their request. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitations.

NOTE: Education records pertaining to students with disabilities may be useful in the future to the student or their parents if application is made for federal benefits.

16. SPECIAL EDUCATION REVIEWS

16.1 Departmental Approval Requirements; Special Education Reviews

Students with disabilities may be served only in schools which have been approved by the Department for the provision of special education and supportive services. To determine if schools meet all applicable standards, a Special Education Review of each school administrative unit, regional special education service, state-operated special education service and special purpose private school (hereinafter "school") shall be conducted or arranged by the Special Services Team, Maine Department of Education on a 5-year schedule. More frequent site visits shall be conducted when it is determined by the Commissioner that additional on-

site monitoring or technical assistance is necessary to assure compliance with federal and state special education requirements.

16.2 Special Education Review Activities

The special education review process shall consist of both a "desk audit" and an on-site visit.

The purpose of the desk audit is to review the special education information on file at the Department. The desk audit shall include a review of the reports filed by the school and any other information as may be required by the Commissioner.

The purpose of the on-site visit is to review all aspects of the special education services provided by the school. The on-site portion of each special education review shall include an orientation, interviews with administrative and instructional staff, examination of facilities, review of a random sample of student records, and such other activities deemed necessary to determine whether the school operates in compliance with special education law and regulations.

16.3 Letter of Findings

Within a reasonable period of the completion of the on-site portion of a program review, the Special Services Team shall provide the superintendent of the administrative unit or the director of the school with a written Letter of Findings concerning the special education services provided by the school.

16.4 Corrective Action Plan

The Special Services Team shall assist the superintendent or director of the school in the development of a Corrective Action Plan when areas of non-compliance with federal or state law and regulations are identified.

If the negotiations on the Corrective Action Plan are not completed within a reasonable period after the S.A.U.'s receipt of the Letter of Findings, the Department reserves the right to develop and submit a final and binding plan to the superintendent or director.

16.5 Report of Compliance Activities

Each school shall provide to the Special Services Team a written report detailing implementation of the activities specified in the Corrective Action Plan. Such written report shall be submitted within the schedule specified in the Corrective Action Plan or upon completion of the Corrective Action Plan, whichever occurs first.

16.6 Approval, Enforcement

The school shall be granted full approval when found to be in compliance with federal and state law and regulations relating to the education of students with disabilities.

If the school is unable to achieve compliance within the period specified in the Corrective Action Plan, the school shall document all efforts to achieve compliance and show just cause for failure to complete the activities specified in the Corrective Action Plan. The school may be granted conditional approval until such time as full compliance is achieved.

Failure to achieve program compliance through the completion of the activities specified within the Corrective Action Plan or failure to submit the Report of Compliance Activities as required above may, in the judgment of the Commissioner and consistent with applicable law, result in one or more of the following enforcement activities:

A. Withholding of state subsidy payments to eligible school administrative units;

B. Withholding of special education or other federal grant funds to schools which are sub-recipients; and/or

C. Referral to legal counsel for appropriate civil action (*see* 20-A M.R.S.A. §§6801-A & 7206).

16.7 Local Special Education Plan

Completion of the review process shall constitute, in part, submission to the Commissioner of that school's plan of services for the education of students with disabilities, as required by 20-A M.R.S.A. §7204(4).

16.8 Public Access

Letters of Findings and Corrective Action Plans are public records and shall be made available to parents and other members of the public upon request in accordance with the Freedom of Access Act (1 M.R.S.A. §401 *et seq.*) Copies shall be available from the Department and the school upon the receipt of such records by the school.

17. PRIVATE SCHOOLS: STATE APPROVAL OF PROGRAMS

17.1 General Principle: Necessity of Approval

No school unit may place a student with a disability in a private general purpose or special purpose school unless that school has been approved for such purposes by the Commissioner of Education.

17.2 Private General Purpose Schools

A private general purpose school which seeks to offer special education services must have been approved as an elementary or secondary school for tuition purposes pursuant to 20-A M.R.S.A. §2951. To accept special education students, the school must also have special education approval.

Notwithstanding any contract or tuition arrangements with a secondary school approved for tuition purposes pursuant to 20-A M.R.S.A. §2951, no student with a disability shall be placed in a private general purpose school through the P.E.T./Individualized Education Program process unless the school also has special education approval. If the Individualized Education Program developed for the student requires special education services which the private school is unable to deliver, the responsible school unit shall make arrangements to provide the services to the student.

17.3 Private Special Purpose Schools

A private special purpose school must meet all applicable components of the basic school approval standards (Maine Dept. of Ed. Regs. 125) for elementary or secondary private schools and shall be approved by the Commissioner for the provision of special education and supportive services.

17.4 Special Education Approval

Each private school that proposes to provide special education and supportive services to students with disabilities shall submit an approval request in the format prescribed by the Commissioner. Each such request for approval shall include:

A. Written requirements for admission including the number of students, the ages, and types of disabilities served;

B. Qualified staff appropriately registered, licensed or certified for their positions and job titles;

C. Adequacy and appropriateness of the curriculum, extracurricular activities and services to meet the needs of the students served by the school;

D. Adequacy of the facilities to meet the needs of the students served by the school;

E. Adequacy of employed and contracted supportive services to meet the needs of the students served by the school;

F. Professional supervision by a certified administrator; and

G. Appropriate teacher-student ratio for the age of the students served.

17.5 Private Special Purpose Schools Outside the State

If satisfied that the standards for special education/school approval in another state are substantially similar to those administered by the Department, and reasonably assured that the other state has adequate supervision and monitoring capacity, the Commissioner may grant approval to a school outside Maine based upon the actions of another state education agency. If such a school is disapproved by the applicable state education agency, the Commissioner shall similarly disapprove the school unless a full special education review by the Department results in a recommendation for direct approval.

17.7 Tuition Placement Approval

One copy of a "Request for Tuition Placement of Students with Disabilities" (EF-S-01 Form) shall be submitted for review and approval by the Department for each student placed by an administrative unit in a special purpose private school (*see* §11.17, State Approval of Placements).

18. SPECIAL EDUCATION FINANCES: STATE SUBSIDY AND DIRECT PAYMENTS

18.1 General Principles; School Unit Responsibility

School administrative units are generally responsible for financing the special education services to students with disabilities in the first instance, with subsidy payments from the State made pursuant to the Maine School Finance Act (20-A M.R.S.A. §15601 *et seq.*) and local property taxes. In some instances, one or more state agencies may bear all or part of the cost of special education services for students with disabilities although Legislative appropriations may limit expenditures.

NOTE: Whether or not a school administrative unit qualifies for special education subsidy under the School Finance Act depends upon the tax base of the school unit and the level of special education costs.

References within this rule to special education subsidy apply to all school administrative units.

18.2 State Subsidy: Allowable Special Education Costs

Special education costs for which subsidy is payable under the School Finance Act include:

A. The salary and benefit costs of certified professional personnel, educational technicians, clerical staff or qualified independent contractors providing special education services or supportive services; and

B. The costs of tuition, board, and special education services paid to other school units or private schools which have been approved by the Commissioner for the provision of special education and supportive services.

18.3 Costs of Qualified Personnel

The salary and benefit costs for qualified educational personnel shall be subsidized by the Department to the extent that these personnel are assigned to special education functions.

A. Certified educational personnel - These shall include administrators, teachers and educational specialists assigned to provide or administer special educational services:

DoE Certificate Title	
Administrator of Special Education	#030
Special Education Consultant	#079
School Psychological Service Provider	#093
Vocational Education Evaluator	#094
Speech & Hearing Clinician	#293
School Nurse	#524
Teacher of Students w/ Disabilities	#282
Teacher - Severe Impairments	#286
Teacher - Hearing Impairments	#292
Teacher - Visual Impairments	#291
Adapted Physical Education	#515

School units may not report as program costs the salaries or benefits (full or prorated) of regular classroom teachers, administrators or educational specialists (such as guidance counselors) who provide instruction and services to students with disabilities in the same manner as to all other students.

B. Licensed contractors - These shall include those persons licensed by appropriate state agencies to provide supportive services to students with disabilities.

Job Title	Licensing Authority
Audiologists	Maine Board of Examiners of Speech-Language Pathology and Audiology
Interpreter / Transliterator	Office of Licensing and Registration, Department of Professional and Financial Regulation
Licensed Clinical Professional Counselors	Maine Board of Professional Counselor Licensure
Occupational Therapists and Occupational Therapy Aides	Maine Board of Examiners of Occupational Therapists
Physical Therapists and Physical Therapist Assistants	Maine Board of Examiners of Physical Therapists
Psychologists	Maine Board of Examiners of Psychologists
Social Workers	Maine Board of Examiners of Social Workers
Speech-Language Pathologists, Speech-Language Pathology Aides and Assistants	Maine Board of Examiners of Speech-Language Pathology and Audiology
Attorneys	Licensed by the Maine Board of Bar Examiners and providing legal services to administrative units as required by these rules.

C. Auxiliary Staff - These shall include those Educational Technicians I, II, and III approved by the Office of Certification and assigned full or part-time to provide special education services. Persons who are assigned as Educational Technicians in regular classrooms, and not providing direct services to students with disabilities within those classrooms, shall not be an allowable special education costs.

18.4 State Payment for State Agency Clients

Special education costs for state agency clients shall be paid by the Department in the year of allocation at 100 percent of actual costs subject to 20-A M.R.S.A. §15613. Administrative units seeking state payment for state agency clients shall submit Forms EF-S-04A and EF-S-04B in the manner required by the Commissioner.

18.5 Special Education Services Report (EF-S-02)

Annual claims for state subsidy of allowable special education expenses shall be made following the close of each fiscal year using the Special Education Services Report (EF-S-02 form) in accordance with the accompanying instructions and with provisions of the School Finance Act.

18.6 Budgetary Hardship

A school unit's state share of subsidy may be increased in the event of budgetary hardship caused by the unexpected costs of placement of a student with a disability. The school unit must petition the Commissioner by the date set for such petitions and demonstrate that the placement will cause a budgetary hardship.

A budgetary hardship exists in an administrative unit when the unit's budget for special education services provided by the administrative unit and for special education tuition and board, as reported to the Commissioner, is caused to exceed the state average percentage for special education of the unit's total budget (excluding Adult Education) for the current year by the initial placement of a student with a disability in an approved school providing special education services.

The Commissioner may adjust the unit's allocation up to the amount of the initial placement cost, if the unit expenditures and/or commitments for special education exceed the state average percentage for special education. Any adjustment granted shall reduce the local expenditure for that purpose in the current year only and will not be the basis for special education allocation in the future. Funds for this adjustment are limited to the amount appropriated by the Legislature.

18.7 Reconciliation of Audit Findings

The annual audit of school units shall determine whether a school unit which receives tuitioned students with disabilities has generated a surplus of income over allowable costs or incurred a deficit. The Commissioner may require a rebate to sending units or additional tuition payments from sending units in such cases or require such other arrangements as are deemed equitable where the audit reveals that reports were made in error.

18.8 Use of Third-Party Funding

A. Nothing in these regulations or the regulations implementing the Individuals with Disabilities Education Act (20 U.S.C. §1400 *et seq.*) is intended to relieve an insurer, Medicaid or other third party, from an otherwise valid obligation to provide or pay for services to a student with a disability.

B. Students with disabilities who are covered by public insurance.

(1) A public agency may use the Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required under these rules, as permitted under the public insurance program, except as provided in paragraph (B)(2) of this section.

(2) With regard to services required to provide F.A.P.E. to an eligible student under these rules, a S.A.U. may not require parents to sign up for or enroll in public insurance programs in order for their child to receive special education services and may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services. A S.A.U. may not use a student's benefits under a public insurance program if that use would decrease available lifetime coverage or any other insured benefit; would result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school; would increase premiums or lead to the discontinuation of insurance; or would risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures. A S.A.U. may pay the costs for deductibles or co-payments that the parent otherwise would be required to pay.

C. Students with disabilities who are covered by private insurance.

(1) With regard to services required to provide F.A.P.E. to an eligible student under these rules, a S.A.U. may access a parent's private insurance proceeds only if the parent provides informed consent consistent with §12.4, Parental Consent.

(2) Each time the S.A.U. proposes to access the parent's private insurance proceeds, it must obtain parental consent in accordance with these rules; and inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the S.A.U. of its responsibility to ensure that all required services are provided at no cost to the parents.

18.9 Local Entitlement Funds

Each school unit providing special education services to students with disabilities is eligible to receive federal "local entitlement" funds upon the Department's approval of the unit's application (Form EF-S-08) for such funding. Applications shall be submitted in the manner required by the Commissioner. The Department shall respond within a reasonable period of the receipt of each such application.

NOTE: The Special Services Team, Federal Programs Subteam, Maine Department of Education should be contacted for more information regarding Local Entitlement Funds.

18.10 Special Education Tuition And Costs For Out-Of-District Placement Adjustment

A school administrative unit that places a student in an out-of-district placement, in a regional program established consistent with 20-A M.R.S.A. §7253, or a regional program recognized by the Department prior to July 1, 1997, shall receive an adjustment equal to the amount, if any, by which the tuition, treatment, and room and board costs for an approved out-of district special education placement in the year of allocation exceeds 3 times the secondary foundation per pupil operating rate for that year, or a prorated amount if the placement is less than a full year. State payments to school administrative units pursuant to this section shall be made during the year of allocation. The funds for the adjustment are limited to the amount appropriated by the legislature for that purpose. The Department is authorized to prorate payments to units if the amount appropriated is insufficient to make full payment to all units.

18.11 Other Agency Responsibility

The Department is responsible for ensuring that students with disabilities who are eligible for special education services are provided a free appropriate public education and that all educational programs for students with disabilities in the State, including any such programs administered by any other state or local agency, are under the general supervision of the Department and meet the standards contained in these regulations.

Nothing in these rules relieves any other public agency, including the Maine Department of Human Services, the Maine Department of Mental Health, Mental Retardation and Substance Abuse Services or the Department of Labor, Bureau of Vocational Rehabilitation, of the responsibility to provide or pay for any special education or supportive service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

This requirement shall not limit the responsibilities of State Agencies other than the Department of Education to provide or pay for some or all of the costs of a free appropriate public education for any student with a disability in the State under their jurisdiction.

Responsibility for services, dispute resolution, and any reimbursement of cost to the Department or local agency shall be governed by Interagency Agreements and the Interagency Dispute Resolution Process, 34 C.F.R. §300.142(a)(3)).

If a public agency other than an educational agency fails to provide or pay for the special education and related services, the S.A.U. shall provide or pay for these services to the student in a timely manner. The S.A.U. may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the S.A.U. in accordance with the terms of the interagency agreement.

19. SPECIAL EDUCATION FINANCES: PUBLIC SCHOOL TUITION COMPUTATIONS

19.1 General Principles

School units may, in accordance with this rule, provide special education services to its students by tuitioning them to another school unit. The tuition rate charged by the receiving unit shall be based upon the allowable costs of special education and supportive services and shall not exceed the actual per pupil costs for these services.

19.2 Allowable Costs

The allowable costs for computation of tuition rates shall be the same as those used in computation of tuition rates for regular students: all special education costs except for costs of community services, capital outlay, debt retirement, tuition and transportation.

19.3 Computation of Tuition Rates

The tuition rate for each school unit receiving tuitioned students with disabilities shall be determined by dividing the sum of the allowable expenditures by the average daily membership. Both the allowable expenditures and the average daily membership used in computing tuition of an on-going public school special education service shall be based on the anticipated expenditures and actual number of students enrolled in the service for the current school year.

19.4 Tuition Rates for New Programs

In the case of a new public special education service that receives tuition students, the tuition shall be computed by dividing the estimated allowable expenditures by the estimated average daily enrollment.

20. SPECIAL EDUCATION FINANCES: PRIVATE SCHOOL TUITION COMPUTATIONS, APPROVAL PROCEDURES

20.1 General Principles

Private special purpose schools and private general purpose schools may, in accordance with this rule, provide special education services to

students with disabilities and receive tuition payments for such services from school administrative units or the Department.

20.2 Annual Year-End Reports

Each private special purpose school shall file an EF-S-10 Year-End Report with the Department in the format required by the Commissioner. All requested information pertaining to actual revenues, expenditures, and enrollments and, where applicable, estimates shall be provided within the specified time limits.

20.3 Tuition Computation: Private Special Purpose Schools

The tuition rate for each private special purpose school shall be determined by dividing the sum of the allowable costs by the average daily membership over the year. Tuition rates may not exceed the actual per student cost of operation of the preceding school year and shall be approved by the Commissioner. No payments shall be made or accepted without prior approval of the tuition rate.

Increases in the tuition rate may not exceed 15 percent from one year to the next unless the school presents sufficient evidence to the Commissioner that a hardship will exist if a higher rate is not approved.

The Commissioner will calculate a tuition rate for new schools based upon the estimated allowable costs of special education services.

20.4 Private General Purpose Schools With Exclusive Contracts Or A Student Enrollment With Greater Than 60% Public Tuition Students

A private general purpose school that has a contract with a school administrative unit for the provision of elementary and/or secondary education or a student enrollment with greater than 60% public tuition students shall establish a tuition rate based on actual per student costs. The tuition rate for such private school special education services shall be determined by dividing the sum of the allowable costs by the average daily membership. Both the allowable expenditures and the average daily membership used in computing tuition of an on-going special education service in a general purpose private school shall be based on the anticipated expenditures and actual number of pupils enrolled in the service for the current school year.

20.5 Private General Purpose Schools With Tuition Students

A private general purpose school that does not have a contract with a school administrative unit for the provision of elementary and/or secondary education shall charge a tuition rate that does not exceed the state elementary or secondary per student tuition rate as computed under 20-A M.R.S.A. §§ 5804 and 5806.

20.6 Residential Treatment Centers

The tuition, treatment, room and board rates for residential treatment centers shall be developed by the Rate Setting Committee of the Children's Residential Treatment Committee (C.R.T.C.).

20.7 Annual Audit Reports

Each private special purpose school shall annually file with the Department, within the time limits set by the Commissioner, an audit report completed by a qualified auditor. The audit of any special education service operated by a private general purpose school shall be incorporated in the audit report required pursuant to 20-A M.R.S.A. §2953.

Each audit report shall include:

A. Accountability of all revenues and expenditures;

B. A determination as to whether proper budgetary controls are in place; and

C. A determination as to whether any financial report submitted to the Department is correct.

20.8 Reconciliation of Audit Findings

The annual audit shall determine whether a school which received students with disabilities has generated a surplus of income over allowable costs or incurred a deficit. The Commissioner may require a rebate to sending units or additional tuition payments from sending units in such cases or require such other arrangements as are deemed equitable where the audit reveals that reports were made in error.

STATUTORY AUTHORITY: 20-A M.R.S.A. §7003

EFFECTIVE DATE: November 1, 1999

APPENDIX 1

Title 17-A M.R.S.A. §1(9), Dangerous weapon.

A. "Use of a dangerous weapon" means the use of a firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which, in the manner it is used or threatened to be used is capable of producing death or serious bodily injury.

B. "Armed with a dangerous weapon" means in actual possession, regardless of whether the possession is visible or concealed, of:

(1) A firearm;

(2) Any device designed as a weapon and capable of producing death or serious bodily injury; or

(3) Any other device, instrument, material or substance, whether animate or inanimate, which, in the manner it is intended to be used by the actor, is capable of producing or threatening death or serious bodily injury. For purposes of this definition, the intent may be conditional.

C. When used in any other context, "dangerous weapon" means a firearm or any device designed as a weapon and capable of producing death or serious bodily injury.

D. For purposes of this subsection, a thing presented in a covered or open manner as a dangerous weapon shall be presumed to be a dangerous weapon.

Title 18 United States Code, Section 930 Subsection g(2) - Dangerous Weapon

The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.